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IN THE MATTER OF:)

) Docket No.

DETERMINATION OF CABLE) 14-CRB-0010-CD

ROYALTY FUNDS) (2010-2013)

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5) Docket No.

6 DETERMINATION OF CABLE) 14-CRB-0010-CD

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9 BEFORE: THE HONORABLE SUZANNE BARNETT

10 THE HONORABLE JESSE M. FEDER

11 THE HONORABLE DAVID R. STRICKLER

12

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P R O C E E D I N G S

(9:18 a.m.)

JUDGE BARNETT: We are wired for sound today. These mics are live, hot mics for us, so we are going to try to remember to turn them off. But if you hear anything coming -- any side-bar chatter up here that you don't think you want to hear, or that we don't want you to hear, please just, you know, let us know that we have hot mics in front of us. We are not reality TV stars, so we are not aware that we have hot mics.

The first order of business this morning is to deal with what we have deemed to be the Sports Claimants' Cross Motion. Let's take it from the top.

The Program Suppliers filed a Third Errata -- and let me just take it from before the top. Dr. Gray filed written Direct Testimony in December of 2016. There was a corrected or amended version on March 9th of 2017, and an additional version amended and corrected again on April 3rd, 2017.

The Third Errata, what is called the Third Errata, contained testimony from Dr. Gray

1 dated January 22nd, 2018.

2 On motion of the Devotional Claimants,
3 the Judges struck the Third Errata. We don't
4 actually ever remove anything from the record,
5 but the order is there on the record and we
6 will not consider the information that is in
7 the Third Errata as far as Dr. Gray's testimony
8 is concerned.

9 Dr. Gray has acknowledged that there
10 was a data error and all of the other parties
11 are aware that he used erroneous data, or
12 incomplete data, in developing his three prior
13 versions of Direct Testimony.

14 And several of the parties here have
15 pointed out to us, in the past -- in past
16 proceedings when parties have said there is an
17 error in our data, we have said we want to have
18 up-to-date and correct data and we have granted
19 the offering party's motion to do those
20 corrections.

21 In this case, the Program Suppliers
22 filed that Third Errata, the Sports Claimants
23 moved to strike it, and for all of the reasons
24 advanced by the Sports Claimants, Judges
25 granted that motion.

1 The bottom line is the January 22nd,
2 2018, version of Dr. Gray's testimony will not
3 be considered. The fact of him filing that
4 correction can be in the record. He can be
5 questioned about the fact. I mean, he's
6 acknowledged that he had incorrect or
7 incomplete data and that's not a secret. It's
8 already in the record, based on all the
9 conversations we have had up to this point.

10 The fact of the Third Errata is not
11 off limits; the content of the Third Errata is
12 off limits. The calculations that took place
13 or that were included in that Third Errata
14 version are off -- are not permitted.

15 The Sports Claimants are now moving
16 essentially to require the Program Suppliers to
17 do an additional analysis using the data that
18 was omitted, because when we struck the
19 January 22nd errata, we struck the whole thing.
20 We struck the additional analysis, we struck
21 the additional data, we struck the whole thing.

22 That motion is denied. What is in the
23 record is available for direct examination and
24 cross-examination. You have all employed very,
25 very smart experts who know how to look at

1 material and to analyze and critique it. What
2 is in the record is in the record. The Judges
3 will hear and weigh evidence that is presented
4 to them and they will afford whatever weight is
5 appropriate to the evidence that is presented
6 to them. So be it.

7 Anything further from the Bench?

8 Judge Feder?

9 (Judge Barnett and Judge Feder
10 confer.)

11 JUDGE BARNETT: The April 3rd version
12 of the Program Suppliers' written Direct
13 Testimony is the most recent thing we have
14 accepted. All three of those prior versions
15 are filed and what each party chooses to
16 present or question about is up to each party,
17 based on your own trial tactics and strategies.

18 Mr. Olaniran, you look perplexed.

19 MR. OLANIRAN: I just want to get some
20 clarification on what is fair game for
21 cross-examination. I understand the ruling is
22 that the Third Errata, both the content and the
23 calculations, are off limits. But then I was a
24 little confused about whether that is also fair
25 game for cross-examination or not.

1 JUDGE BARNETT: No. No.

2 MR. OLANIRAN: Okay.

3 JUDGE BARNETT: Anyone can examine or
4 cross-examine Dr. Gray about his acknowledged
5 data error, but not about what effect that
6 might have on any of his calculations, or what
7 they did with them, or anything in that Third
8 Errata, because there were other approaches and
9 analyses that he did in the Third Errata that
10 are not permissible.

11 (Judges conferring privately.)

12 JUDGE BARNETT: None of your problems
13 are easy, just so you know. It is not your
14 imagination.

15 Mr. MacLean?

16 MR. MACLEAN: Your Honor, just a very
17 quick clarification. I believe that the last
18 non-stricken version of Dr. Gray's testimony is
19 dated November 2nd. It was November of 2017,
20 not April of 2016.

21 MS. PLOVNICK: Your Honor, that was
22 his Rebuttal.

23 JUDGE BARNETT: I have two dates for
24 Rebuttal. I must have missed the November '17
25 Rebuttal. I have September and then I have

1 February 12th of this year.

2 MS. PLOVNICK: There was an additional
3 one in November.

4 JUDGE BARNETT: In November?

5 MR. MACLEAN: I will accept that. I
6 just wanted to make sure I knew which one to
7 look at.

8 JUDGE BARNETT: Okay. And I haven't
9 heard any objections to the February amended
10 rebuttals, because I think those are all based
11 on some late-produced evidence.

12 MR. OLANIRAN: One more hopefully not
13 too complicated question. With respect to the
14 Rebuttal testimony, their direct and the Third
15 Errata, those two would not be admissible then?

16 JUDGE BARNETT: There would be no
17 reason to present that evidence, because the
18 Third Errata is not going to be -- the decks of
19 the Third Errata are not going to be presented.

20 MR. OLANIRAN: Thank you.

21 JUDGE BARNETT: Mr. Garrett?

22 MR. GARRETT: Yes, ma'am, just a
23 couple of points here. On the February
24 rebuttals, some of those were in fact addressed
25 to Dr. Gray's Third Errata. So we will need to

1 switch those out, if I understand your Honor's
2 ruling.

3 JUDGE BARNETT: I don't know if
4 "switch those out" is -- you will have to
5 cherry-pick what's in them. But we don't
6 want -- we're not accepting any additional
7 filings at this point. If they address
8 something that's in the Third Errata, then we
9 just ignore it or you just ignore it in your
10 examination of the witness.

11 MR. GARRETT: And one other point of
12 clarification, your Honor. The motion that the
13 seven Devotional Claimants filed referred
14 broadly to the Errata and moved to strike. I
15 understood that to mean both the Third Errata
16 to Dr. Gray's original testimony and the Second
17 Errata to his written Rebuttal testimony. Were
18 both of those stricken or just the Third
19 Errata? Because the Second Errata contains the
20 calculations -- revises the calculations based
21 upon the new data.

22 JUDGE BARNETT: We only ruled on the
23 Third Errata to the written Direct Testimony.
24 We believed that was what was in front of us.

25 MR. GARRETT: The Second Errata does

1 contain revised calculations, renewed
2 calculations based upon that Third Errata data.

3 JUDGE BARNETT: The Second Errata --

4 MR. GARRETT: To his written Rebuttal
5 testimony.

6 JUDGE BARNETT: To the Rebuttal
7 testimony? And what is the date on that?

8 MR. GARRETT: They were filed at
9 exactly the same time, your Honor.

10 JUDGE BARNETT: Oh, that Third Errata
11 was also the Second Errata to the Rebuttal.

12 MR. GARRETT: It was his Third Errata
13 to the written Rebuttal testimony of Dr. Gray
14 and the Second Errata to the written Rebuttal
15 testimony of Dr. Gray. The primary change in
16 the Second Errata to the written Rebuttal
17 testimony was to change the various
18 calculations so they would be consistent with
19 the Third Errata.

20 JUDGE BARNETT: Well, to the extent
21 those calculations, that analysis, those data
22 are in the Second Errata to the written
23 Rebuttal testimony, they are part and parcel of
24 what we have chosen to disregard in this
25 proceeding. It can't come in through the back

1 door or the side door.

2 MR. GARRETT: And as I understand it,
3 your Honor, it is clear that our witness will
4 not be able to testify as to the effect of the
5 data and changes Dr. Gray made. It is
6 something that we can only raise on
7 cross-examination of Dr. Gray?

8 JUDGE BARNETT: I'm sorry; you're
9 confusing me. Your witnesses can't talk about
10 something that we aren't allowing in the
11 record. I mean they can't critique something
12 in Dr. Gray's analysis that is not in the
13 record.

14 MR. GARRETT: I understand. Thank
15 you, your Honor.

16 JUDGE BARNETT: I think we are
17 continuing to take Dr. Mathiowetz. You had
18 only eight minutes, Mr. Cho.

19 MR. CHO: That's right.

20 JUDGE BARNETT: Dr. Mathiowetz, you
21 may return to the witness stand and you remain
22 under oath.
23 Whereupon--

24 NANCY MATHIOWETZ,
25 a witness, called for examination, having previously

1 been duly sworn, was examined and testified further as
2 follows:

3 MR. CHO: Your Honor, before we begin
4 I would like to move the admission of
5 Exhibit 3011, which is the Reference Guide on
6 Survey Research that Dr. Mathiowetz has
7 testified about, and I believe all the parties
8 have consented to its admission.

9 JUDGE BARNETT: Any objection?

10 MR. GARRETT: No objection, your
11 Honor.

12 JUDGE BARNETT: Thank you. Exhibit
13 3011 is admitted.

14 (Exhibit Number 3011 was marked and
15 received into evidence.)

16 CROSS-EXAMINATION - Resumed

17 BY MR. CHO:

18 Q. Good morning, Dr. Mathiowetz.

19 A. Good morning, Mr. Cho.

20 Q. I would like to pick up where we left
21 off yesterday about the Horowitz surveys. In
22 particular, I wanted to talk about the Horowitz
23 surveys of systems that carried only Public
24 Television on a distant basis.

25 A. I was hoping you were going to go back

1 to the homework assignment that you gave me.

2 Q. Certainly, we can go there.

3 A. Can we go back to the last thing you
4 had in front of us on the visual that was a
5 list of the problems that I had enumerated with
6 respect to the Horowitz.

7 Q. Yes. Is this the slide?

8 A. Yes.

9 Q. Okay.

10 A. You can ask the question. I'll wait.

11 JUDGE BARNETT: I think that's always
12 the best way.

13 THE WITNESS: I write questions,
14 though, for my life, so...

15 BY MR. CHO:

16 Q. Fair point. So do you have any reason
17 to believe that any of the flaws that you've
18 identified in this paragraph 51 of Exhibit 1007
19 would have biased the Horowitz survey results
20 in favor of Public Television?

21 A. You asked me this question yesterday,
22 and with the luxury of a little time to go back
23 and review both my own written Rebuttal
24 testimony, as well as Mr. Trautman's, there is
25 a part of Mr. Trautman's analysis that speaks

1 directly to this last bullet that we talked
2 about with respect to the concentration of
3 burden related to particular respondents having
4 to report for numerous cable systems.

5 If we go back and look at
6 Mr. Trautman's analysis -- I believe it's on
7 page 43 of his written Rebuttal testimony, he
8 talks about one particular respondent who
9 reported for multiple systems and was an
10 outlier with respect to their valuation for
11 Public Television.

12 And in Mr. Trautman's analysis, he
13 showed that when the sensitivity of that
14 outlier -- and I believe he showed that when
15 you remove that person's data, the valuation
16 for Public Television moves by 5 percentage
17 points. That is, it drops by 5 percentage
18 points just related to that one individual's
19 response because of two factors: They're an
20 outlier, and because they contributed a large
21 amount of data due to the way that Horowitz
22 collected their data where a single respondent
23 reported for multiple cable systems.

24 Q. Dr. Mathiowetz, did you identify that
25 particular criticism anywhere in your report?

1 A. Not the calculation. But clearly in
2 this bullet I'm talking about the issues
3 related to the excessive burden. And we talked
4 in my Direct Testimony yesterday about several
5 slides about what that concentration does and
6 how one has to be sensitive to that analysis.

7 But no, I didn't present those
8 particular estimates, because Mr. Trautman had
9 already covered that point.

10 Q. So, Dr. Mathiowetz, do you agree with
11 Mr. Trautman that that system is an outlier?

12 A. Well, once again, right, you're
13 looking -- so as I talked about yesterday, you
14 are looking at a data collection approach in
15 the Horowitz data that has a small number of
16 respondents sometimes reporting for multiple
17 systems.

18 As someone who collects survey data
19 and does estimation, you want to be sensitive
20 to, hmm, I don't want any one person to pull a
21 regression line or pull an estimate just
22 because of the nature of their response. So
23 why don't you look for outliers?

24 What's an outlier; right? You look
25 across the data. That is a subjective

1 viewpoint that you have to make. In
2 Mr. Trautman's analysis, he looked and this one
3 respondent's valuation for Public Television
4 was four times the mean for everybody else in
5 the Horowitz data. He labeled that an outlier.

6 So I'm just reporting back to you;
7 right? Different people can decide what an
8 outlier is, but my point that I wanted to make
9 sure that we came back to is that because of
10 the concentration of data in the Horowitz --
11 and because of another case that I talked about
12 yesterday which didn't have to do with Public
13 Television, but had to do with the evaluation
14 of syndicated shows; right -- any one person
15 who is reporting, for instance, for 10, 20, 30,
16 40 systems, can have a big impact on the data.
17 And if you are going to bring those data to
18 Court, you have to be sensitive to the fact
19 that, hmm, do I want one person who has
20 contributed a lot to this dataset to move a
21 regression line or to move a particular
22 valuation percentage?

23 JUDGE STRICKLER: Excuse me. Good
24 morning, Professor.

25 THE WITNESS: Good morning.

1 JUDGE STRICKLER: Is there any concern
2 that you might have that there may be a reason
3 why that one person is responsible for so many
4 different cable systems -- we don't know the
5 answer to this, of course -- that they may have
6 superior knowledge as to what is considered
7 valuable, which is why they are entrusted with
8 responding or having responsibility across a
9 number of systems? Since we don't know
10 anything at all about the person, what looks
11 like a statistical outlier may actually be
12 someone who is somewhat differentiated from
13 others who respond with greater knowledge,
14 certainly within the marketplace or the
15 industry, which is why they were entrusted with
16 responding and having responsibility for many
17 cable systems.

18 THE WITNESS: Certainly one has to
19 consider that perhaps those particular systems
20 were unique with respect to their valuation of
21 Public Television. I'm not saying that that
22 person was wrong or right. I'm not saying that
23 they were inaccurate.

24 What I'm trying to put before the
25 court is the need to be aware of the influence

1 of a particular respondent when one respondent
2 is not just reporting for a single cable
3 system, which is what you typically see in
4 datasets, but where one respondent here may be
5 contributing 10 or 20 or almost 30 percent to
6 the dataset.

7 So I can't, of course, sitting here
8 today, say that that person is right or wrong.
9 But I do think it's important to be aware of
10 the differences between the Bortz and the
11 Horowitz data collection effort where you can
12 see this influence of a single individual in
13 the Horowitz data and where you don't have that
14 impact in the Bortz data.

15 JUDGE STRICKLER: Given that we're
16 aware of it -- you have made us quite aware of
17 it, that's terrific -- what are we to make of
18 it, in your professional opinion?

19 THE WITNESS: Well, once again, it is
20 a concern I have with the way that Horowitz has
21 collected the data. You have an alternative
22 data source that isn't plagued by that
23 particular problem and that is the data that
24 was collected by Bortz.

25 JUDGE STRICKLER: Well, when you call

1 it a problem, that sort of assumes the
2 conclusion. What I'm trying to get at is do we
3 have enough information to know it's a problem?
4 It is certainly a statistical outlier, but if
5 we don't know anything about the individual or
6 the cable systems that this individual
7 represents, how are we supposed to know it is a
8 problem as opposed to valuable information.

9 THE WITNESS: So sitting here today, I
10 can't address it. I could certainly go back to
11 the data and try to answer your question, your
12 Honor.

13 JUDGE STRICKLER: But there is nothing
14 in your report that addresses whether we should
15 consider that information as a statistical
16 outlier to be given less weight, or unique
17 information, because this particular individual
18 is not homogeneous with others who responded
19 who didn't represent as many cable systems?

20 THE WITNESS: So in my written
21 Rebuttal testimony, I offer an alternative
22 example that has to do with syndicated shows
23 valuation, rather than Public Television. And
24 once again, looked to see, you know, what that
25 impact is of a particular respondent.

1 But, yes, I cannot -- I'd have to go
2 back and do further analysis in order to make
3 that final determination that you're asking
4 for.

5 JUDGE STRICKLER: Thank you.

6 BY MR. CHO:

7 Q. Dr. Mathiowetz, I guess I wasn't quite
8 clear. Is it your subjective opinion -- I
9 think you said it was a subjective opinion as
10 to whether it is an outlier or not; is that
11 right?

12 A. What is an outlier? There are
13 statistical rules for thinking about what is an
14 outlier; right? So different statisticians
15 bring different rules to the table and say when
16 you have observations that fall more than three
17 standard deviations away from the mean -- there
18 are different standards. There is not one set
19 of standards used by statisticians.

20 So when I'm looking at a dataset, I am
21 looking to see where there are data that are
22 different with respect to thinking about two or
23 three or four standard deviations away from the
24 mean of everybody else. That is subjective.

25 If you put -- when Mr. Harvey comes on

1 the stand, or any other statistician, they all
2 have different rules. And, once again, those
3 rules are based on what -- you know, different
4 approaches to datasets and different ways to
5 think about cleaning the data, different ways
6 to think about sensitivity analysis.

7 JUDGE FEDER: Professor, this
8 particular data point, how many standard
9 deviations does it fall from the mean?

10 THE WITNESS: So once again I'm citing
11 Mr. Trautman's analysis. So I don't know what
12 he used as a cut point. I believe he said it
13 was four times the value, but I'd have to go
14 back -- do we have Mr. Trautman's written
15 Rebuttal testimony that I could just reference
16 to make sure that I'm quoting him accurately.

17 MR. CHO: May I approach the witness?

18 JUDGE BARNETT: Sure.

19 THE WITNESS: Thank you.

20 (Mr. Cho proffers document to
21 Witness.)

22 THE WITNESS: So if you look on
23 page 43 of Mr. Trautman's written Rebuttal
24 testimony, he talks about the single respondent
25 accounted -- he or she alone accounted for

1 between 15 and 23 percent of the responses to
2 the Horowitz survey. Moreover, the allocations
3 to the PTV category for this single MSO average
4 over 45 percent, a level that is more than four
5 times the median Horowitz PTV allocation of
6 10 percent and is a clear outlier in relation
7 to the allocations typically assigned to the
8 category.

9 So his definition there was four times
10 the median, which is a very generous
11 consideration of an outlier.

12 BY MR. CHO:

13 Q. In your opinion, is it appropriate to
14 look at how many multiples of the median a data
15 point falls in to determine whether or not it
16 is an outlier?

17 A. It is a different approach than
18 looking at number of standard deviations, but
19 it's certainly one that is used.

20 Q. Is it only used in the context of
21 normal distributions, or is it used in the
22 context of other types of distributions of
23 data, as well?

24 A. Well, that is why the standard
25 deviations are typically used, rather than just

1 looking at four times a particular data point.

2 Q. Is it true that if a dataset were
3 actually distributed not normally, or that it
4 had high variance, that four times the median
5 might well be within normal?

6 A. No, not four times of the median. You
7 might have variability that is four times
8 within the mean, but not four times within the
9 median.

10 Q. Well, I can give an example. Let's
11 say there were some cable systems that only
12 carried Public Television. How much would
13 those systems have awarded to Public Television
14 on a relative value scale for all of the
15 programming that they carried?

16 A. You mean theoretically?

17 Q. Yes.

18 A. Theoretically, one would think they
19 would report 100 percent.

20 Q. Is it your opinion that that would be
21 an outlier, since it would be four times the
22 median?

23 A. No.

24 Q. So in your opinion do you have any
25 basis to believe that the system that

1 Mr. Trautman identified is an outlier in this
2 dataset?

3 A. No, once again I'm relying on his
4 assessment and I did not look at this
5 particular case specifically. But I just
6 wanted, you know -- you asked me a question
7 yesterday. I wanted to make sure that we
8 circled back and pointed to this particular
9 analysis.

10 Q. I appreciate that. I just want to be
11 clear for the record, but you are not aware of
12 any basis yourself to identify any particular
13 outlier in this dataset with respect to Public
14 Television that should be excluded?

15 A. No, but I do think that -- I think the
16 question you posed to me yesterday was whether
17 any of the bullet points had a potential
18 influence -- the bullet points that I
19 criticized Horowitz, had a potential impact on
20 PTV valuation. That last point, once again I
21 did note yesterday that I haven't looked
22 specifically with respect to PTV. But that
23 last point is one that is of issue with respect
24 to the entire Horowitz dataset and one that
25 needs to be considered, regardless of which

1 program category you are looking at.

2 Q. Now, this isn't exactly like some
3 surveys where you are trying to capture a true
4 value in the population and you are sampling
5 only a very small fraction of that population;
6 right? In this case, in fact, in the largest
7 stratum, Mr. Trautman surveyed 100 percent --
8 or attempted to survey 100 percent of the cable
9 systems in that largest stratum; isn't that
10 right?

11 A. They are -- 100 percent are included.
12 Now we are switching back to the Bortz survey,
13 so 100 percent are sampled in that stratum, but
14 not 100 percent participate.

15 Q. And it is also true for the Horowitz
16 survey, isn't it?

17 A. That's true.

18 Q. So when they are doing that, aren't
19 they capturing variation in the amount of
20 carriage, for example, of Public Television
21 among those systems in that largest stratum?

22 I can rephrase, if you would like.

23 A. Sorry, I --

24 Q. Is it possible that some systems in
25 that largest stratum carry a lot of Public

1 Television and might have a very different
2 valuation of Public Television than other
3 systems in that stratum?

4 A. Why are we focusing just on the four
5 stratum? I mean, there can be variability in
6 the valuation of Public Television for any
7 system, regardless of which stratum they were
8 sampled from.

9 Q. Yes, that is true. But just sticking
10 with the four stratum for now, because both
11 Horowitz and Bortz tried to survey all of those
12 systems, isn't it true that, you know, some of
13 those systems might have valued Public
14 Television more than other systems and carried
15 more Public Television systems than other
16 systems in the same stratum?

17 A. Sure. There could be variation
18 across -- within even the four stratum, yes.

19 Q. And isn't it true that Mr. Trautman
20 and Mr. Horowitz were both trying to capture
21 that variation in the stratum when they
22 conducted their survey?

23 A. Well, the nature of the constant sum
24 question, regardless of which stratum we are
25 talking about, is trying to capture and measure

1 people's valuations, whether it is for Public
2 Television or any of the other program
3 categories. So I don't quite understand your
4 question.

5 Q. I guess what I'm trying to get at is
6 Mr. Trautman and Mr. Horowitz weren't trying to
7 find what the median cable system believed the
8 value of Public Television was, were they?
9 They were trying to determine what all of the
10 cable operators valued Public Television and
11 the other categories at for each of their
12 systems; isn't that right?

13 A. Well, they are trying to determine --
14 I mean, the estimate that is produced is an
15 average across all of the systems within the
16 stratum and then across those four strata.
17 Right? They weren't producing a median, but
18 rather more than of a mean.

19 Q. So if one system actually, you know,
20 was a very large system or represented a lot of
21 data and a lot of subscribers, is that a reason
22 to discard that information?

23 A. No, and I didn't suggest that we
24 discard it. The point that I'm trying to drive
25 home is that between the Horowitz survey and

1 the Bortz survey we have very different levels
2 of responding burden. So if we just think
3 about what you just laid out, both of them in
4 the fourth stratum are trying to interview all
5 of the systems in that stratum; right? So
6 theoretically they are going after -- except
7 for slightly defining the strata differently,
8 they are theoretically going over the same
9 respondents.

10 Now, you have two very different
11 approaches to data collection. One used by
12 Horowitz that asks the respondent to report for
13 multiple systems. So you have non-independence
14 of the observations in this dataset where you
15 have one respondent potentially reporting for
16 multiple systems.

17 In contrast, when you look at the
18 Bortz data collection, going after that same
19 population in that fourth strata, you have a
20 data collection approach where the respondent
21 only has to report for a single cable system at
22 a time. And if that executive was responsible
23 for reporting for more than one cable system,
24 they were interviewed -- the data were
25 collected separately.

1 So in other words, they had a chance
2 to value each of those cable systems
3 separately. Whereas in the Horowitz survey,
4 when they were being queried about the same
5 distant signals for multiple cable systems, it
6 was one interview.

7 Okay. Why is that -- so we have a
8 tension here. I'm not saying that the
9 respondents in the Horowitz survey are wrong if
10 they valued it at 100 percent. I'm asking us
11 to be sensitive to the fact that we have a very
12 different data collection methodology that
13 potentially impacts this dataset. And we can
14 see that impact when we do sensitivity
15 analysis.

16 So Mr. Trautman's done a piece of
17 sensitivity analysis. I've done some looking
18 at a different program category. All that is
19 is trying to say, you know, these two different
20 methodologies going after the very same
21 respondents result in differences with respect
22 to the influence of any one respondent.

23 Q. Let's say hypothetically, just
24 hypothetically, that the decisions at that
25 particular cable operator were made an a very

1 high level as to decide which programs -- I
2 mean, which channels to carry and which distant
3 signals to carry. And the person who made the
4 decision actually decided for all of those
5 different systems him or herself.

6 Now, in that scenario, do you think it
7 is wrong as a matter of survey methodology to
8 ask that person about the valuations of those
9 different categories of programming at
10 different distant signals, or do you think that
11 would be an appropriate methodology?

12 A. My concern isn't whether they have
13 picked the wrong or the right respondent,
14 although theoretically Bortz started from the
15 bottom and Horowitz started at the top. One
16 would have hoped that we had gotten to the same
17 level, but obviously they didn't.

18 My concern is think about what the
19 Horowitz respondent had to do in a single
20 interview. Remember, they're not being asked
21 to report just about the sample cases. They're
22 being asked to report about the universe for
23 which they have oversight of cable systems.

24 Now they're being reviewed, all of the
25 distant signals for those cable systems, and in

1 a single interview they are being asked to
2 evaluate those program categories.

3 So if we think -- I mean, that means
4 they have to give a single valuation, even if
5 they think, Geez -- I won't take Public
6 Television, but just take WGN -- WGN in the
7 Midwest might be more important than WGN would
8 be out in California, but I have to do all WGN
9 in a single interview. So it's an integrated
10 average.

11 It's a very different response task
12 than what you're asking the respondents to do
13 in Horowitz -- I mean in Bortz; sorry. The
14 Horowitz task is much greater than that in
15 Bortz. Sorry.

16 Q. But in my hypothetical scenario,
17 wouldn't that be essentially the job of the
18 person who is answering the survey on a
19 day-to-day basis to take into account all of
20 those different variables and all of those
21 different factors across all the systems they
22 are responsible for?

23 A. Certainly that would be their job.
24 But I assume that when -- once again, I'm not a
25 cable system executive. So I don't know when

1 they go out and purchase these signals if they
2 are thinking about the spread of the country;
3 whether they purchase and think about
4 California separately than the East Coast, even
5 though they all look alike with respect to the
6 distant signals they are carrying.

7 Q. I believe you said a moment ago that
8 there is non-independence between the responses
9 to the Horowitz survey when a respondent is
10 actually answering for multiple systems; is
11 that right?

12 A. I did say that, yes.

13 Q. Is that also true for respondents to
14 the Bortz survey who are answering for multiple
15 systems, that there is non-independence between
16 their answers?

17 A. So once again, the magnitude of that
18 non-independence is many factors greater in
19 Horowitz than it is in Bortz.

20 Q. Do you know if Mr. Trautman took into
21 account that non-independence when he
22 calculated his confidence interval?

23 A. I believe neither Mr. Trautman nor
24 Dr. Frankel took into account that
25 non-independence.

1 JUDGE BARNETT: The Reporter didn't
2 get your question.

3 JUDGE FEDER: Should they have?

4 THE WITNESS: In my viewpoint, they
5 should have. And why is that important? The
6 confidence intervals are a function of
7 clustering or non-independence. And that's,
8 once again, where the magnitude of that
9 clustering in Horowitz, where you have an
10 average of responding for eight or nine
11 systems, has a much greater impact on the
12 confidence intervals you would see from
13 Horowitz, if it was computed correctly, than
14 the impact on the Bortz confidence intervals if
15 you took that into account. Because there you
16 see only executives answering for about 2.2
17 systems per executive.

18 BY MR. CHO:

19 Q. So I believe that you actually offered
20 your own confidence intervals for some of the
21 studies submitted by Program Suppliers, but you
22 did not submit any corrected confidence
23 intervals for the Bortz survey; is that
24 correct?

25 A. That's correct.

1 Q. And you're not aware of anything in
2 the record that would suggest what the accurate
3 confidence intervals would be for the Bortz
4 survey?

5 A. No, I do not believe there is one in
6 the record.

7 Q. And just to sort of clarify another
8 aspect of that, even if those confidence
9 intervals were corrected for the Bortz survey,
10 that would not take into account any bias that
11 may be attributable to the omission of PTV-only
12 systems; is that right?

13 A. Right. The confidence intervals that
14 would be based on the data that were collected,
15 as Mr. Trautman has clearly said, the
16 100 percent PTV were not included in their
17 interviews.

18 Q. Thank you. Okay. So I'm going to
19 return to my outline, unless you have anything
20 else to add.

21 So unlike the Bortz surveys, the
22 Horowitz interviewers actually called systems
23 that carried only Public Television signals;
24 isn't that right?

25 A. That is correct.

1 Q. And the Horowitz interviewers asked
2 those respondents to estimate the relative
3 value of all of the programs broadcast on those
4 PBS stations; isn't that right?

5 A. They did, yes.

6 Q. Now, in your opinion, was that
7 question confusing?

8 A. To me, looking at that question and
9 asking someone to make a relative valuation of
10 one object is like: Okay, you're telling me it
11 has to sum to 100 percent, it has got to be
12 100 percent.

13 So when you ask that question and they
14 only have a single distant signal, I wonder
15 what those respondents thought they should be
16 thinking about. And, you know, I didn't get to
17 debrief those respondents. The data that is
18 produced by Horowitz suggests that many
19 respondents didn't report 100 percent for that
20 category. So they may have not understood the
21 task when asked that.

22 Q. I believe you told Judge Feder
23 yesterday you thought maybe those responses
24 were uninformative; is that right?

25 A. I don't remember the term I used.

1 Q. Well, would you say those responses
2 are uninformative?

3 A. I don't know if I would call it
4 uninformative; right? Theoretically, they
5 should be answering 100 percent. Several of
6 the respondents in the Horowitz survey, when
7 asked about only PTV, answered less than
8 100 percent. I'm not quite sure what to make
9 of that.

10 Q. Isn't it true that one of the
11 advantages of conducting an interview for a
12 constant sum survey is that interviewers can
13 actually prompt respondents if the valuations
14 are not adding up to 100 percent?

15 A. That is one of the advantages of using
16 interviewers, yes.

17 Q. But the Horowitz interviewers for
18 those Public Television-only systems did not
19 instruct the respondents to make sure that
20 their estimates added up to 100 percent; right?

21 A. If you're going to talk about the
22 Horowitz questions, because there's five
23 different versions, I'd like to at least -- can
24 we look specifically at the question wording
25 used by Mr. Horowitz in his survey for

1 PBS-only? I can't hold all five versions of
2 his questionnaire in my head.

3 Q. Sure. Of course. That's fair. I
4 don't know if you have Mr. Trautman's testimony
5 in front of you, but he quotes a portion of it.
6 Otherwise, we can try and find -- do you have a
7 copy of that?

8 A. I have Mr. Trautman's testimony in
9 front of me.

10 Q. Is it Direct or Rebuttal?

11 A. Direct and Rebuttal.

12 Q. Oh, I think in his Direct Testimony --

13 A. If we are talking about the Horowitz
14 questionnaire --

15 Q. I know. He quotes from it, because --

16 A. I'd actually prefer to see the
17 Horowitz questionnaire, if we are going to talk
18 about the Horowitz questionnaire.

19 Q. I will find you a copy.

20 (Pause.)

21 BY MR. CHO:

22 Q. It appears that the binders do not
23 contain that particular exhibit.

24 A. It just helps me to be able to
25 actually look at a questionnaire when we are

1 talking about it.

2 MR. CHO: Permission to approach the
3 witness.

4 (Mr. Cho proffers document to
5 Witness.)

6 JUDGE BARNETT: Certainly. Do you
7 have the exhibit number on that?

8 MR. CHO: It's 6012.

9 JUDGE BARNETT: Thank you.

10 BY MR. CHO:

11 Q. So my question was the other -- I'm
12 sorry -- the Horowitz interviewers did not
13 instruct the Public Television-only respondents
14 to make sure that their estimate added up to
15 100 percent; is that right?

16 A. I'm trying to find the question.

17 MR. CHO: Mr. Hunziker, if you could
18 pull up that line.

19 BY MR. CHO:

20 Q. I believe in your testimony in
21 paragraph 52 you say, "PBS-only cable system
22 executives were not instructed that the value
23 of their estimate needed to add up to
24 100 percent."

25 A. I did say that. I just want to

1 confirm that I'm looking at the right question.

2 Q. And in your testimony you cite
3 Appendix A, page 36.

4 A. Thank you. Right. I finally found
5 it. Just to be sure. "So considering the
6 value of the programs broadcast only on PBS
7 station to your cable system, what percentage,
8 if any, of the fixed-dollar amount would you
9 allocate for this type of programming?"

10 Right. So they don't specifically ask
11 them -- and I'm just looking through briefly,
12 quickly, to make sure that they don't go back
13 and make sure that it adds up to 100 percent.
14 There isn't a general instruction at the
15 beginning that says: Please write down your
16 estimates and make sure they add to
17 100 percent. But they don't seem to reiterate
18 that at the point of the PBS.

19 Q. In fact, they don't say that to the
20 PBS-only respondents; isn't that right?

21 A. Oh, that's right. Thank you.

22 Q. Now, a constant sum question asks the
23 respondent to divide the fixed sum of 100
24 across two or more categories; right?

25 A. Typically, yes.

1 Q. Typically, or is there --

2 A. Well, this is supposed to be a
3 constant sum question here and we have an
4 example of where they are not asking them to go
5 across. But, yes, if you look in marketing
6 research texts, constant sum questions ask a
7 respondent to parse out points or dollars or
8 something across multiple categories.

9 Q. And the other respondents to the
10 Horowitz survey, besides the PTV-only
11 respondents, the ones who did not carry Public
12 Television, those were instructed to make sure
13 that the valuations did add to 100 percent;
14 right?

15 A. Correct.

16 Q. So not only is this question maybe
17 confusing, as we talked about earlier, but
18 isn't this question different from the constant
19 sum question that was asked of all the other
20 respondents?

21 A. Well, in the sense that the nature of
22 the task is different between asking about a
23 single category versus multiple, and then the
24 reiteration to follow up and add to 100, yes.

25 Q. Now, I'd like to ask you next about

1 how the Bortz survey handled systems that
2 carried only Public Television signals on a
3 distant basis. We just talked about the
4 Horowitz and we will switch gears to the Bortz.

5 Do you agree with Mr. Trautman that
6 there needed to be some kind of adjustment to
7 the Bortz survey shares because the Bortz
8 survey discarded Public Television-only
9 systems?

10 A. Yes, I do agree that, because they
11 were excluded from being interviewed, they have
12 no representation in the Bortz survey
13 estimates. And so, yes, some adjustment is
14 appropriate.

15 Q. Yesterday, I think you criticized
16 Dr. Frankel's adjustments to the Bortz survey
17 shares; right?

18 A. I did.

19 Q. But you didn't offer any criticisms,
20 as I recall, of Ms. McLaughlin's approach; is
21 that right?

22 A. I did not, no.

23 Q. And I believe yesterday you testified
24 in response to -- I believe it was a question
25 from Judge Feder -- that before you could

1 endorse Mr. McLaughlin's approach fully, you
2 would have to spend some more time to make sure
3 you understood her methodology; is that right?

4 A. I think what I said was I understand
5 -- from reading her written Rebuttal testimony
6 or Direct, I can't remember which, you can
7 clearly see that Ms. McLaughlin takes into
8 account a response rate by strata similar to
9 what was realized in Bortz. The piece of
10 information that I'm missing with respect to
11 Ms. McLaughlin, as I sit here today, is I do
12 not know if she sampled at 100 percent the
13 PBS-only or if she sub-sampled within strata
14 for the Public Television stations. And that
15 is a missing piece of information that I could
16 not -- I would actually have to go look at her
17 Excel spreadsheets and have not done before
18 coming to Court.

19 Q. To be clear, were you provided with
20 Ms. McLaughlin's data and her testimony that
21 fully details her method?

22 A. Yes, but if I remember correctly --
23 right -- when we started off my Direct: Why am
24 I here; right? I'm a survey methodologist. So
25 I came looking at the surveys and the survey

1 data. There is a lot of economics experts that
2 I did not focus in on with respect to my
3 testimony.

4 Q. But you did look at the adjustments
5 that were performed by Dr. Frankel; right?

6 A. Well, Dr. Frankel, right, I had
7 already commented on in my written Rebuttal
8 testimony and so had been looking at his
9 estimates already. And, therefore, you know,
10 he did in his filing in February, I did look at
11 his, because that was part of the --

12 Dr. Frankel was the person who did the
13 estimations in the survey. So to me,
14 Dr. Frankel's and Mr. Horowitz' testimonies are
15 linked to the survey collected by Mr. Horowitz.

16 Q. As you sit here now, are you aware of
17 any aspect of Ms. McLaughlin and
18 Dr. Blackburn's adjustment of the Bortz survey
19 shares that in your opinion is inappropriate or
20 incorrect?

21 A. Once again, as I've already testified,
22 I don't know how they populated it. But
23 from -- other than that, the fact that they
24 took into account the response rate that was
25 realized in Bortz in their revised estimation

1 and their augmentation of the Bortz, it seems
2 appropriate.

3 Q. Let's talk about another -- a
4 different aspect of the Bortz survey. In your
5 written testimony you talk about Dr. Shari
6 Diamond's Reference Guide on Survey Research;
7 is that right?

8 A. I do.

9 Q. In fact, you use it as the framework
10 to review the methodology of the Bortz survey?

11 A. I do.

12 Q. In your opinion, is Dr. Diamond's
13 Reference Guide on Survey Research a reliable
14 authority on survey research?

15 A. There are those buzz words that
16 lawyers like to ask me about. Is it a -- it
17 offers, I think, a very sensible way to
18 approach a survey and look at sampling, at the
19 design of a questionnaire, and implementation,
20 and puts forth the key questions that are
21 useful to address in thinking about either
22 designing a survey or evaluating a survey.

23 It is not, you know, a piece of
24 empirical literature. It is not a textbook on
25 survey research. But it offers a nice, quick,

1 handy guide to what are the key points. What
2 was the population of interest, et cetera. And
3 the way it frames it by asking it in questions,
4 I think, is very useful.

5 Q. I'm not trying to be difficult, but
6 are you saying it is not a reliable authority
7 on survey research?

8 A. I don't mean to parse words with you,
9 but what do you mean by reliable? Does it
10 offer scientific evidence? No. It summarizes
11 the literature. She is not a survey
12 researcher, but is drawing upon the survey
13 research literature in putting together that
14 chapter.

15 So I have relied upon it -- in the lay
16 term of "relied," not the statistical
17 reliability -- I would say, yes, I rely on it.

18 Q. Okay. Thank you.

19 MR. CHO: Permission to approach the
20 witness.

21 JUDGE BARNETT: Certainly.

22 MR. CHO: For the record, I'm handing
23 the witness Exhibit 3011.

24 JUDGE BARNETT: Thank you.

25 THE WITNESS: Can I just interject

1 something? I wrenched my back sometime between
2 yesterday and here. Can I just stand up for a
3 couple of minutes?

4 JUDGE BARNETT: Absolutely.

5 THE WITNESS: Thank you.

6 JUDGE BARNETT: At any time for any
7 length of time. And that goes for anybody else
8 in the room. There have been times in the past
9 when I have put a lectern on the bench so I
10 could stand for a while. So absolutely.

11 THE WITNESS: Thank you. I will sit
12 soon.

13 BY MR. CHO:

14 Q. Dr. Mathiowetz, one of the questions
15 that the Reference Guide for Survey Research
16 asks is: What is the evidence that nonresponse
17 did not bias the results of the survey? Isn't
18 that right?

19 A. Can you direct me to the specific page
20 that you're looking at, Mr. Cho?

21 Q. Yes.

22 MR. CHO: Mr. Hunziker, if you could
23 pull up Slide 11.

24 BY MR. CHO:

25 Q. I believe it is quoted in your

1 testimony at paragraph 19, but I will also
2 point you to the reference now. I believe it
3 is page 3983, JSC 3983.

4 A. You mean page 398?

5 Q. It's 383. Sorry, there are two sets
6 of page numbers. One is the one provided by
7 Counsel for Sports Claimants and then the other
8 is on the document itself.

9 A. Thank you. Now, what was your
10 question?

11 Q. My question is just the Reference
12 Guide asks: What is the evidence that
13 nonresponse did not bias the results of the
14 survey? Is that right?

15 A. That's right.

16 Q. And did you address that question in
17 your Direct Testimony?

18 A. I have to go back and look at it. I
19 certainly, obviously raised it in my Direct
20 Testimony.

21 MR. CHO: Mr. Hunziker, could you pull
22 up -- thank you.

23 BY MR. CHO:

24 Q. So this is paragraph 22 from your
25 Direct Testimony, Exhibit 1006. Would you say

1 that this paragraph addresses nonresponse bias?

2 A. Well, what I'm trying to do in this
3 paragraph is to simply state that nonresponse
4 bias is a function both of nonresponse rates,
5 as well as the difference between respondents
6 and nonrespondents.

7 And in part of what I'm looking at
8 here is that the Bortz survey had, for the
9 industry, a relatively high response rate. And
10 more importantly, that response rate of
11 approximate 50 to 55 percent across the years
12 was achieved across the four strata. That is,
13 they didn't have differential nonresponse.

14 Where you would worry about
15 nonresponse bias would be, for instance, if we
16 had -- I'll take an egregious example -- very
17 high response rates to the low strata, like
18 100 percent, and very low response rates to the
19 cable systems that were in the richest or the
20 fourth strata.

21 Q. So one way you can see whether there
22 is potential response bias is if there are
23 differences between the sample of respondents
24 in what -- I guess not the sample, the
25 respondents and the nonrespondents?

1 A. Well, you don't have data on
2 nonrespondents typically; right? And so you
3 have to look to whatever metrics you have.
4 Now, once again I think Mr. Trautman has done
5 some analysis related to this to look at how
6 the universe of the sample of the Bortz
7 respondents matched to the full universe and
8 sees a fairly high correspondence, which
9 suggests a lack of nonresponse bias.

10 Q. We'll get there in a second. But
11 focusing on your Direct Testimony, you wrote
12 with respect to nonresponse bias that, "In
13 addition, high response rates were achieved
14 consistently across the strata, thereby
15 reducing concerns relating to differential
16 nonresponse." Is that right?

17 A. That's what it says here, yes.

18 Q. So does that mean in your opinion that
19 nonresponse did not bias the Bortz survey
20 results?

21 A. It gives us reenforcement that
22 nonresponse bias -- that nonresponse was not
23 differential and, therefore, you see equal
24 representation across the four strata. That
25 does not completely wipe out the potential for

1 nonresponse bias, no.

2 Q. Was there any other evidence you
3 relied on when you were preparing your Direct
4 Testimony to conclude that nonresponse bias may
5 not have biased the results of the Bortz
6 survey?

7 A. I don't think I offered any.

8 Q. I believe you said that the Bortz
9 survey's response rate was between -- well, was
10 in the 50s; is that right?

11 A. Across the four years, yes.

12 Q. Is it possible for there to be
13 nonresponse bias even for surveys with higher
14 response rates than that?

15 A. It almost sounds like you found my
16 lecture notes on nonresponse bias. So you know
17 you're looking at -- when you think about
18 nonresponse bias you are thinking about a
19 multiplicative function. That is, the
20 nonresponse rate times the difference between
21 the respondents and nonrespondents.

22 You worry about that most of all when
23 you think that there is a potential motivation
24 that causes respondents with certain
25 characteristics to not participate. So bear

1 with me for my little example.

2 The Federal Government at one point
3 wanted to do a survey related to exposure to
4 risks for HIV. It wanted to have a very high
5 response rate. This is back in the 1980s.

6 Did a large pilot study. That pilot
7 study had about a 93 percent response rate, so
8 exceptionally high. But it was clear that men
9 most at risk of contracting HIV were least
10 likely to participate. So that the Federal
11 Government decided to cancel the survey that,
12 even though it had an exceptionally high
13 response rate, that the nature of the
14 difference between the respondents and the
15 nonrespondents was such that the population
16 that was most of interest was not going to
17 participate.

18 Okay. So now let's go back to the
19 Bortz survey; right? Interviewer is calling:
20 I need to talk to someone who is in charge of
21 purchasing or is in charge of programming.
22 Right? There is no reason, thinking from a
23 behavioral perspective, that the respondents
24 would be different than nonrespondents. That
25 is, you know, when survey researchers look at

1 these data or look at any data collection and
2 think about nonrespondents, they have to think
3 about is there a theoretical reason why some
4 people would participate and some people
5 wouldn't?

6 Here there is no reason to think --
7 these are establishments; right? This is not
8 the kind of issue where you are thinking, oh,
9 I'm doing a survey about drunk driving. The
10 people who are not going to respond to my
11 survey when I tell them I'm doing a survey
12 about drunk driving are the very people that
13 not going to respond.

14 Here there is no a priori theory that
15 would say certain respondents would
16 consistently not report to the survey.

17 Q. But there are circumstances in which,
18 even when there is no a priori theory as to why
19 there would be differential response rates,
20 that, in fact, there may be differences between
21 respondents and nonrespondents.

22 A. Right. We're walking into the abyss
23 of the great unknown.

24 MR. CHO: Mr. Hunziker, if you could
25 put up Slide 16.

1 BY MR. CHO:

2 Q. In the Reference Guide for Survey
3 Research, Dr. Diamond states that nonresponse
4 often is not random. Do you agree with that
5 statement?

6 A. I do agree with that. And I think
7 that that is a much bigger issue when one is
8 dealing with general population surveys than
9 establishment surveys.

10 Q. Dr. Diamond also notes that there is a
11 Federal Government guideline --

12 MR. CHO: Mr. Hunziker, if you could
13 switch the slide.

14 BY MR. CHO:

15 Q. -- that states, "Plan for a
16 nonresponse bias analysis if the expected unit
17 response rate is below 80 percent." Do you see
18 that?

19 A. I do see that.

20 Q. For the Bortz survey, have you
21 reviewed not just what is in the written
22 report, but also the underlying data?

23 A. I have.

24 Q. And did you examine that data to see
25 if there are differences between the

1 respondents who completed the survey and the
2 universe of cable systems?

3 A. I did some analysis with respect to
4 that, but not a great detailed analysis.

5 Q. What specifically did you do?

6 A. I think I was mostly focused on
7 looking to see if the response rates within
8 strata varied and how they varied across years.

9 Q. You're familiar with the term "distant
10 subscriber instances"?

11 A. Yes.

12 Q. What are distant subscriber instances?

13 A. DSEs, you mean? So this is --

14 Q. I'm sorry; not DSEs. Distant
15 subscriber instances; Not distant signal
16 equivalents. I know this proceeding has a lot
17 of lingo.

18 A. There is a lot of lingo here. I
19 don't -- I know what DSEs are in my head. I
20 know I have come across DSI. But sitting here
21 today, I don't think I want to define it.

22 BY MR. CHO: Mr. Hunziker, could you
23 put up Slide 18.

24 BY MR. CHO:

25 Q. You talk about distant subscriber

1 instances in your testimony. Does that ring a
2 bell?

3 A. When I had the benefit of all of my
4 documents in front of me, yes.

5 Q. Is it fair to say that distant
6 subscriber instance is one distant signal
7 received by one cable subscriber?

8 A. I believe that is how I interpreted it
9 in putting together my report, yes.

10 Q. Did you think to compare any
11 categories of distant subscriber instances
12 between the respondents to the Bortz survey and
13 the universe of all cable systems to see if
14 they're being over- or underrepresented?

15 A. I didn't consider doing that analysis,
16 no.

17 Q. So unlike for the Bortz survey, you
18 did look at whether there is bias in the
19 Canadian Claimants Group survey, the
20 Ford-Ringold survey, didn't you?

21 A. Well, I was quite motivated to do
22 that, because they did not -- for the
23 Ford-Ringold survey, they indicated that they
24 selected -- when a cable system executive was
25 being interviewed, they were interviewed about

1 a single distant signal; right? And they
2 indicated -- they didn't tell us how they
3 sampled that, but they did say that there was
4 preference given -- I can't remember exactly
5 the words they used -- preference given to
6 French-speaking signals.

7 Well, that to me -- when someone
8 doesn't describe to me the random process by
9 which they have sub-selected, that to me is a
10 little trigger to say: I need to go look at
11 that. Because why was preference given to
12 French-speaking signals in this case? What was
13 the algorithm used to sub-sample these
14 particular distant signals?

15 I didn't have that same level of
16 motivation, because we didn't see that kind of
17 sub-sampling within Bortz.

18 Q. So in your opinion, is comparing
19 distant subscriber instances between
20 respondents -- let me step back. For the
21 Canadian survey, in fact, you decided to
22 compare the distant subscriber instances of the
23 French language stations among the survey
24 respondents against the universe of Canadian
25 signals; is that right? Looking at

1 paragraph 68?

2 A. Well, looked at. Let me just say I
3 didn't do analysis. These were all tables that
4 had been produced as part of the Canadian
5 Claimants' reports. And so I was just
6 comparing one set of tables to a different set
7 of tables and saw how there was a mismatch in
8 what they had reported.

9 Q. And one of the those tables was about
10 distant subscriber instances?

11 A. Right. And so I'm citing here the
12 Canadian Claimants' reports and one of them
13 does talk about distant subscriber instances.

14 Q. So in your opinion is comparing
15 distant subscriber instances between the
16 respondents and the universe a reasonable way
17 to assess whether there may be nonresponse bias
18 in a cable operator survey?

19 A. Now that you've pointed it out, it
20 might be a reasonable way. But I'd have to
21 think a little further about it. I think what
22 struck me once again with respect to the
23 Canadian Claimants was just how different that
24 DSI was compared to their sample with respect
25 to French speaking.

1 I'd have to -- in order to make that,
2 you know, and go back and do an analysis with
3 respect to thinking about nonresponse, I'd have
4 to really consider issues related to what
5 populates the distant subscriber instances,
6 where those data come from, et cetera,
7 et cetera.

8 Q. So let's just make it hypothetical to
9 be easier and you don't have to worry about
10 diving into all of that data right now.
11 Hypothetically, if there were a difference in
12 Public Television's share of distant subscriber
13 instances among the respondents who completed
14 the Bortz survey, versus the universe of cable
15 systems, would you think it would be possible
16 that the Bortz survey results would be affected
17 by nonresponse bias?

18 A. Where are you -- say that once again.
19 Because you can't produce a DSI out of Bortz;
20 right? You get a proportion related to a
21 valuation.

22 So, I'm sorry, I'm not following -- I
23 mean, the analysis that I did here is with
24 respect to French-speaking systems.

25 Q. Let me step back and maybe clarify the

1 language. So a distant subscriber instance is
2 an instance of one cable subscriber getting one
3 distant signal. So, for example, if a cable
4 system has 20 subscribers and they each get two
5 distant signals, that is 40 distant subscriber
6 instances.

7 A. Okay. I got that.

8 Q. And let's just say one of them is a
9 Public Television station. Then you would say
10 there were 20 Public Television distant
11 subscriber instances for that cable system and
12 20, maybe, Commercial distant subscriber
13 instances for that cable system. And we
14 actually don't need to use a survey to get
15 that. That is all filed here at the Library of
16 Congress. So we actually have information
17 about the distant subscriber instances even
18 without surveying anybody.

19 So my hypothetical is if there is a
20 difference between the Public Television share
21 of distant subscriber instances among the
22 respondents who completed the survey, the Bortz
23 survey, versus the universe of cable systems,
24 would it be possible that the Bortz survey
25 would be affected by nonresponse bias?

1 A. Thank you for your clarification. I
2 see -- you're looking at whether there is, at
3 the cable system level, the nonresponse as
4 opposed to the valuations. Yes, you could do
5 that analysis and look at potential nonresponse
6 bias.

7 Q. All right. So I'm going to dive a
8 little bit more into your criticism of the
9 Canadian Claimants Group Ford-Ringold survey --
10 unless you would like to take a break.

11 JUDGE BARNETT: Before we dive, let's
12 take a 15-minute recess.

13 (A recess was taken at 10:31 a.m.,
14 after which the trial resumed at 10:50 a.m.)

15 JUDGE BARNETT: Mr. Cho, you may dive.

16 MR. CHO: Diving right in.

17 BY MR. CHO:

18 Q. On page 64 of your written Rebuttal
19 testimony on the screen, you wrote that, "The
20 overrepresentation of French-speaking channels,
21 coupled with the unreliable estimates, rendered
22 the data from the Ford-Ringold study to be of
23 little to no utility with respect to the issue
24 of relative market value of Canadian
25 programming on Canadian distant signals." Is

1 that still your opinion?

2 A. That is.

3 Q. When you say unreliable estimates, are
4 you talking about the confidence intervals
5 on --

6 A. I am.

7 Q. Sorry -- on page 33 of your written
8 Rebuttal testimony?

9 A. Yes, I am.

10 Q. And that is what is up on the slide
11 here?

12 A. Yes.

13 Q. So those confidence --

14 A. Those charts.

15 Q. Sorry. So those confidence intervals,
16 those are for the valuation of Sports
17 programming on Canadian signals; right?

18 A. Yes, those are.

19 Q. And now I'm just going to round a bit
20 to make the math simpler, but the widest of
21 those intervals was roughly between from about
22 10 percent to about 30 percent; right? It's
23 that right column.

24 JUDGE STRICKLER: You are rounding the
25 year 2013?

1 MR. CHO: Yes, well, any of them. I
2 guess one is 9 to 33, but I'm just rounding --

3 THE WITNESS: 2012 looks to be the
4 widest, but I think in my Rebuttal -- can I
5 just check my Rebuttal report, because I think
6 there is a table for --

7 (Witness examining document.)

8 THE WITNESS: I just wanted to check
9 something, thank you.

10 BY MR. CHO:

11 Q. No problem. So if I'm rounding to the
12 nearest 10, just to to make my math a little
13 easier, is it fair to say that the widest
14 confidence interval in that right column is
15 about 10 to about 30 percent?

16 A. From 9 to 33 percent.

17 Q. Yes.

18 A. Well, you know, we are arguing about
19 small percentage points here in this hearing.
20 So in 2012, that confidence interval goes from
21 8.8 to 33.3.

22 Q. Yes, thank you. So let's just assume
23 hypothetically -- definitely only for the
24 purposes of discussion -- all of the
25 programming on Canadian stations is worth

1 somewhere around 5 percent of the total royalty
2 pool.

3 MR. CHO: And Mr. Hunziker, can you
4 show the next slide, so we can keep track of my
5 math.

6 BY MR. CHO:

7 Q. If I am doing the math right, would
8 that mean that the confidence intervals for the
9 Sports programming on Canadian stations would
10 amount to approximately half a percentage point
11 and 1-1/2 percent points?

12 A. To calculate a confidence interval you
13 have to know the sample size, as well as -- so
14 what sample size are you assuming in order to
15 make these computations.

16 Q. I'm sorry; I'm not trying to calculate
17 a confidence interval. I'm just taking your
18 confidence interval -- I understand I may be
19 rounding too much, but let's say it's 9 to 33.
20 But my point is, I guess, if the Canadian
21 station programming were worth 5 percent of the
22 total royalty pool -- which it is not -- but if
23 it were, then the confidence interval for the
24 Sports share between around 10 percent to
25 30 percent would mean that the Canadian

1 stations's Sports programing is between about a
2 half of a percent and 1-1/2 percent; is that
3 right?

4 A. I'm sorry; I'm not trying to be dense;
5 I'm just trying to follow what you are doing
6 here.

7 Q. Sorry. If all the Canadian
8 programming is worth about 5 percent of the
9 royalty pool, so the Sports programming is
10 somewhere between 10 percent of that and
11 30 percent of that, so --

12 A. All the Canadian is 5 percent.

13 Q. Right -- would be half a percentage
14 point and 30 percent of the Canadian
15 programming would be 1-1/2 percentage points;
16 is that right?

17 A. Right. All you are doing is taking 10
18 to 30 percent of 5 percent to multiply this.

19 Q. Exactly.

20 A. Got it. Okay. I'm with you now.
21 Sorry.

22 Q. So another way to say that would be
23 that the Canadian Sports programming would be
24 worth 1 percentage point plus or minus half a
25 percentage point. Is that fair to say? In

1 this hypothetical?

2 A. One -- let me just back up. So what
3 you're really saying here in the slide is that
4 Sports share of Canadian stations' programing
5 is a point estimate of about 20 percent and it
6 ranges from 10 to 30 percent; right?

7 Q. Right. Based on your Table 3.

8 A. Okay. That math looks reasonable.

9 Q. So is it your view that that is such a
10 wide confidence interval that it makes the
11 study of little to no utility in the context of
12 this proceeding?

13 A. Certainly I hadn't looked at this kind
14 of calculation, but when you think about it
15 from a statistical viewpoint, right, I made my
16 decision and my declaration in my written
17 Rebuttal based on the confidence intervals that
18 I produced in Table 3; right? Those are
19 extremely -- I mean there is a very small
20 sample size in the Canadian survey, in the
21 Ford-Ringold survey. That renders very wide
22 confidence intervals. They are what they are.

23 Q. I guess I'm just trying to understand,
24 does that mean that in the context of this
25 proceeding, that that level of the confidence

1 interval, which I think we established is about
2 a percentage point, that that is so wide as to
3 make the study of little to no utility in this
4 proceeding?

5 A. Well, it's a percentage point when you
6 take 10 percent of a 5 -- I mean in your
7 hypothetical. But let's just look at Table 3;
8 right?

9 In previous rulings, Judges have
10 looked to the confidence intervals to be
11 informative, because of issues with respect to
12 thinking about point estimates; right? So
13 first and most important, in the Ford-Ringold
14 report they didn't report standard errors; they
15 reported standard deviations. I thought it was
16 useful for there to be a translation of those
17 standard deviations into standard errors, so we
18 are comparing apples to apples.

19 Now when I look at these confidence
20 intervals and compare them to the confidence
21 intervals one sees in the Bortz survey, you see
22 much tighter confidence intervals, driven in
23 part by the size of the sample and the nature
24 of the sample design in Bortz.

25 Q. Now, just according to Mr. Trautman,

1 doesn't the Bortz survey have even wider
2 confidence intervals than 1 percentage point?

3 A. Well, yes, we can look at those
4 standard errors and they are wider than
5 1 percentage point.

6 Q. Okay. Let's come back to the first
7 part of your sentence in paragraph 62.

8 BY MR. CHO: Mr. Hunziker? Thank you.

9 BY MR. CHO:

10 Q. When you say, "The overrepresentation
11 of French-speaking channels," are you referring
12 to your statement that French language stations
13 accounted for only 21 percent of the distant
14 subscriber instances, and which is less than,
15 as you pointed out, the 36 to 55 percent of the
16 French language systems in the Ford-Ringold
17 sample?

18 A. Right. So in the Ford-Ringold survey,
19 you have overrepresentation of the
20 French-speaking stations.

21 Q. So again hypothetically, if the
22 Canadian station programming is valued on the
23 order of 5 percent of the total royalty pool,
24 would it be fair to say that that
25 overrepresentation that you identify would have

1 an effect of, at most, approximately
2 1 percentage point of the total royalty pool?

3 A. Well, where are you getting this
4 5 percent from? Is this from the Canadian or
5 from Horowitz or from Bortz? Because they all
6 have very different standard errors around
7 them. So we should really talk about -- if we
8 are going to talk about Canada and the Canadian
9 channels, let's look at the Bortz and Horowitz
10 estimates that are about .2 to 2.2 with
11 standard errors around those point estimates.
12 So none of those estimates come in at 5 percent
13 of the royalty pool.

14 Q. I agree. I'm happy to use the figure
15 that they are at 2 percent. But --

16 (Laughter.)

17 A. They are sitting very close to me, so
18 I have to be careful.

19 (Laughter.)

20 Q. I guess my point is that even if the
21 Canadians were as large as 5 percent, which
22 sounds like you and I agree maybe they
23 shouldn't be, then 20 percent of that, versus
24 40 percent of that, would be a 1 percentage
25 point difference, roughly?

1 A. You know, I hate doing math on the
2 stand.

3 Q. Sorry.

4 A. And so I would like to reserve my
5 judgment about your computation, because you're
6 taking a point estimate with a standard error
7 and now you are multiplying it by something
8 and, sitting here today at 11 a.m., I don't
9 know if the translation of that standard error
10 just is a direct linear function along your
11 compensations.

12 JUDGE BARNETT: Public math is never
13 advised, not even for statisticians.

14 THE WITNESS: Without my calculator
15 and my flip chart.

16 BY MR. CHO:

17 Q. Absolutely fair. Just to be clear,
18 though, I'm no longer asking about the standard
19 errors or the point estimates of your Table 3.
20 I'm just talking about this overrepresentation
21 point where you say that the French language
22 stations accounted for roughly 20 percent of
23 the distant subscriber instances, but then that
24 French language systems accounted for 30 to 55,
25 or let's just say 40 percent of the sample.

1 So you know, that would be -- if the
2 Canadians were as high as 5 percent in that
3 world, then, you know, even if all of the
4 French stations gave 100 percent to the
5 Canadian group and all of the non-French
6 language stations give zero percent to the
7 Canadian, even that extreme example, the
8 biggest difference you would get from this
9 nonresponse bias -- I mean from this
10 overrepresentation bias is a bias of
11 1 percentage point of the total royalty pool;
12 is that right?

13 A. Well, it's compounded by the fact that
14 for the Canadian survey they are only
15 interviewing about one distant -- let's just
16 walk through this; right? Let's just round
17 this to 20 percent; right?

18 Q. Yes.

19 A. And so we see and we know from the
20 survey about 40 percent of them are distant
21 signals -- I mean 40 percent are French
22 speaking. So that is about a 20 percentage
23 point difference, but 100 percent difference.
24 So you know it's -- this is why we have lies,
25 damn lies, and statistics; right?

1 So you have almost 100 percent more
2 present in the survey than you do in the
3 population. How do I get that? You get
4 40 percent minus 20 percent is 20, divided by
5 the 20 that is in the population. Okay.

6 So if you have an inflation of
7 100 percent represented in the sample and now
8 in your extreme point -- right -- if all of the
9 people who are in the sample are valuing the
10 Canadians at 100 percent and all of them who
11 weren't included, because they weren't French
12 speaking, would have valued it as zero; right?
13 So now I have to do -- so now that's 20 percent
14 times 100 percent. You've got that figured
15 out. So that's 20 percent.

16 Q. 20 percent of the entire Canadian
17 share, which in this hypothetical would be
18 5 percent, but it probably should be some other
19 number?

20 A. Yes.

21 Q. So I guess I just want to put that all
22 together. Is it your opinion that a constant
23 sum survey with a confidence interval of
24 approximately 1 percentage point, or maybe
25 less, and overrepresentation bias of

1 approximately 1 percentage point, or maybe a
2 little less, is of little to no utility in the
3 context of this proceeding?

4 A. Those aren't the levels that we're
5 seeing. Let's just take the survey at its face
6 value. We have almost 100 percent
7 overrepresentation of French-speaking systems.
8 That's the survey. Forget, you know, what the
9 impact is. When you look at the Ford-Ringold
10 survey with about a 30 to 55 percent -- I can't
11 remember the numbers exactly -- of
12 French-speaking systems, when their own data
13 say that about 21 percent of the distant
14 subscriber instances are French, right, that is
15 a significant bias in that representation.

16 Then let's look at the standard errors
17 that come from the Ford-Ringold survey in and
18 of themselves. They are wide standard errors.
19 So as you look at the point estimates from that
20 survey, you have to consider those confidence
21 intervals.

22 Now, you're extrapolating it up to
23 kind of the broader world then and trying to
24 apply that then to some other estimate. So I
25 don't want to agree with your conclusion, even

1 though you're pointing this math out; right?
2 If you are going to evaluate the Ford-Ringold
3 survey, then you have to look at the standard
4 errors that are produced from that survey.

5 Q. I guess I thought I was including
6 those. But I guess my question really, you
7 know, when the Judges are trying to look at the
8 entire universe of data out here, if there is a
9 wide confidence interval -- 10 to 30 percent I
10 would say in the abstract is very wide for a
11 confidence interval -- but it only pertains to
12 a very small amount of the total royalty pool,
13 does that still render that study of little to
14 no utility in this proceeding?

15 A. I'm not going to speak for the Judges.
16 I am coming at this as a survey methodologist.
17 So the utility of this survey, when you have
18 such small sample sizes, to me renders it
19 unreliable. They obviously have to make their
20 own decision about the data.

21 MR. CHO: No further questions.

22 JUDGE BARNETT: Mr. Olaniran, are you
23 the next up?

24 CROSS-EXAMINATION

25 BY MR. OLANIRAN:

1 Q. Good morning, Dr. Mathiowetz. My name
2 is Gregory Olaniran, and I am counsel for the
3 Program Suppliers.

4 A. Good morning.

5 Q. You didn't have any role in the
6 development of the Bortz surveys that are being
7 used in this proceeding, did you?

8 A. No, I did not.

9 Q. And you were asked to review the Bortz
10 surveys and render an opinion on the survey
11 methodology; is that correct?

12 A. Yes, after the data had been
13 collected.

14 Q. And the factual information about the
15 2010 through '13 Bortz surveys on which you
16 relied for your opinion, where did that come
17 from?

18 A. I'm sorry; could you repeat the
19 question?

20 Q. All of the facts that you relied on
21 for your opinion with regard to the Bortz
22 surveys, where did that information come from?
23 Just Mr. Trautman, or the Bortz --

24 A. The reports of the Bortz survey, as
25 well as my own professional knowledge about the

1 field. But you are saying where did I get my
2 information about the Bortz survey? Is that
3 the question?

4 Q. Yes.

5 A. So there is a report that was part of
6 Mr. Trautman's Direct written testimony and
7 that served as the basis for my -- the
8 foundation for my review.

9 Q. Now, and you reviewed all of the
10 template questionnaires attached to
11 Mr. Trautman's Direct Testimony; is that
12 correct?

13 A. Yes, I did.

14 Q. Okay. Did you review all of the
15 versions of -- all the different versions of
16 the survey?

17 A. Do you mean the ones that were
18 produced for 2010 to 2013?

19 Q. Actually, I was referring to the
20 templates. There are several different
21 versions of each survey.

22 A. There are two -- there are two major
23 templates for every single year and I've
24 reviewed those. There is one for WGN-only and
25 then there is for other systems.

1 Q. Are you aware that, with respect to
2 the two categories of templates, they had
3 additional versions within each category?

4 A. Well, absolutely. There are -- I mean
5 if we look at the question wording, it varies
6 depending upon the nature of the distant
7 signals.

8 Q. Okay. Did you also review the
9 completed questionnaires in your preparation?

10 A. I have looked at some, but not every
11 single completed questionnaire.

12 Q. Do you recall how many you looked at
13 for each year?

14 A. Probably 50 to 100.

15 Q. For each year or --

16 A. Yes.

17 Q. -- for years.

18 A. Yes, each year.

19 Q. And did you perform any statistical
20 tests regarding the validity or the reliability
21 of the results?

22 A. So with respect to thinking about the
23 validity -- right -- we have, looking at the
24 Bortz instrument, an instrument that is a
25 modified version of the constant sum question

1 that's been used and relied upon in proceedings
2 in the past. From that perspective, it has
3 already established itself with respect to
4 construct validity.

5 So, no, I reviewed the questionnaire
6 and looked at it from that perspective of
7 construct validity, does it measure what it
8 purports to measure? So --

9 Q. So -- I'm sorry. Please finish.

10 A. So with respect to reliability, there
11 are no data from the Bortz survey that I could
12 use to measure reliability and, therefore,
13 didn't undertake that.

14 Q. If I understand your response with
15 regard to validity, you actually did not
16 conduct any tests with regard to validity. You
17 relied on previous findings with regards to the
18 Bortz surveys; is that correct?

19 A. That's correct.

20 Q. And then with regards to --

21 A. Can I finish --

22 Q. Please.

23 A. -- my response? So, when you think
24 about validity, and as a statistician thinking
25 about validity or as a psychologist thinking

1 about validity, there are different ways to
2 measure validity. And one is to think about,
3 well, what is the true value out there? Well,
4 we don't know what the true value is. That is
5 why we are doing this survey.

6 So to think that there is an analysis
7 that one can just go out and conduct with
8 respect to validity is, you know, that doesn't
9 exist.

10 So you have to think about the other
11 ways to think about assessing validity. One
12 that is used a lot in social sciences is
13 construct validity. How do you measure
14 construct validity? Well, you can look to see
15 whether experts believe that it measures what
16 it purports to measure.

17 Well, clearly, this constant sum
18 question has been used before. And in some
19 sense it actually also has predictive validity
20 in the fact that in 2004 to 2005, it was the
21 foundation by which the Judges made their
22 rendering about allocations.

23 So with respect to validity, I didn't
24 feel -- we're not looking at a new
25 questionnaire. I did not feel we needed to --

1 that I needed to go out and measure or attempt
2 new empirical data with respect to validity.
3 And even if I was interested in doing so, which
4 I'm always interested, it is almost impossible
5 to assess that at this point.

6 JUDGE STRICKLER: Excuse me. Did I
7 hear you correctly that you said that the Bortz
8 survey has predictive validity because the
9 Judges in '04 and '05 adopted it?

10 THE WITNESS: Yes. So, you know, one
11 thing you look to see is whether an instrument
12 has been used for the purpose for which it was
13 collected. And we see, you know -- and that is
14 a form of either construct or predictive
15 validity.

16 JUDGE STRICKLER: Thank you.

17 BY MR. OLANIRAN:

18 Q. And with respect to reliability, you
19 said that you did not perform any statistical
20 tests; is that correct?

21 A. No, I did not.

22 Q. Thank you.

23 JUDGE FEDER: Excuse me. How are you
24 defining reliability in this context?

25 THE WITNESS: So that's a great

1 question, because we all have different uses of
2 that term. And unfortunately in statistics
3 there are two uses of the term reliability. So
4 let's make sure we are perfectly clear.

5 The one Mr. Cho and I just talked
6 about with respect to reliability has to do
7 with confidence intervals. And so that's
8 talked about as reliability.

9 But I'm going to presume that I
10 understand that what you're talking about with
11 respect to reliability is often referred to
12 such as test/retest reliability. That is, does
13 administration of this instrument to the same
14 person within the same time frame, when nothing
15 else has changed, get you the same answer?
16 That's a measure of test/retest reliability
17 that is often considered in thinking about
18 questionnaires.

19 Because -- the analogy I like to use
20 is one with my sense of blood pressure. If you
21 have a blood pressure device -- right -- you
22 want it, if I put it on my arm or your arm or
23 anyone else's arm, you want it to be a
24 consistent measuring device. And if you put it
25 on my arm now and you do it two minutes

1 later -- and hopefully my blood pressure hasn't
2 gone up -- and if it renders the same blood
3 pressure, you see it as a reliable instrument.

4 You would like the same thing with
5 respect to a survey. And when you say the test
6 of reliability, that was my assumption. But
7 I'm glad you asked the question that clarified
8 that. That's very different than the
9 confidence intervals and reliability that we
10 just had been talking about.

11 BY MR. OLANIRAN:

12 Q. And stated with respect to the latter,
13 stated differently, just means that the study
14 yields consistent results under the same
15 conditions. Is that a fair way to put it?

16 A. Under the exact same conditions in the
17 same time frame administered to the same
18 respondent.

19 Q. So you didn't do any reliability
20 testing, did you?

21 A. I was hired in 2016. These data were
22 collected in 2010 to 2013. There is no way
23 post hoc to do the kind of measure of
24 reliability that we just discussed.

25 Q. Okay. And following your review, you

1 concluded that the 2010 through '13 Bortz
2 survey provide a valid and reliable assessment
3 of the marketplace value of different
4 categories of distant signal programming that
5 cable systems carried during the 2010 through
6 '13 years; is that correct?

7 A. You're obviously quoting from a
8 particular paragraph. You want to point me to
9 that paragraph, just so I see it?

10 Q. Yes, paragraph 2 -- I'm sorry, page 2,
11 paragraph 4 of your Direct Testimony.

12 A. Yes, I do see that.

13 Q. Okay. Is it fair to describe the term
14 "valid" as meaning a survey measures what it
15 purports to measure?

16 A. Well, certainly validity is measured
17 and discussed in statistics a lot of different
18 ways. And construct validity does, while it
19 may appear to be circuitous to us sitting here
20 in Court, it is how construct validity is
21 designed.

22 Q. And the thing being measured in this
23 proceeding is the marketplace value of
24 different categories of distant signals
25 programming?

1 A. Well, the question before the Court
2 is, right, how to distribute the royalties.
3 And one approach that has been taken and has
4 been relied upon in the past is to look at the
5 relative valuations by cable system executives.

6 Q. So was that a yes to my question?

7 A. I think it is a yes.

8 Q. Thank you. And the different program
9 categories to which you refer in your testimony
10 are the program categories that are identified
11 in the Bortz surveys; is that correct?

12 A. That's correct.

13 Q. And the only survey literature you
14 cite in your Direct Testimony is Dr. Diamond's
15 Reference Manual, which I think you've
16 testified to, this Exhibit 3011. And the scope
17 of the reference guide is somewhat limited, I
18 think, as you testified; is that correct?

19 A. What do you mean by "it's limited"?

20 Q. In other words, the manual is not
21 exhaustive of all of the issues that are
22 related to survey research, but it is a guide;
23 is that right?

24 A. It is a reasonable guide to the major
25 issues.

1 Q. Thank you. And you're familiar with
2 the testimony of Dr. Steckel on behalf of the
3 Program Suppliers; is that right?

4 A. I am.

5 Q. And for his Direct Testimony, he
6 relied on the Federal Judicial Center's Manual
7 for Complex Litigation. Do you recall that?

8 A. I do recall him citing to that, yes.

9 Q. And that's a reputable publication
10 too, is it not?

11 A. It is a similar guide to the one that
12 I've used, yes.

13 Q. And in his Direct Testimony,
14 Dr. Steckel referred to several factors,
15 criteria -- I think the MCL criteria -- that he
16 believed that a survey must conform to. Do you
17 recall that?

18 A. I do recall him citing to that guide.
19 I don't remember exactly his testimony on those
20 points.

21 Q. Okay. I'll represent to you these are
22 direct quotes from Dr. Steckel's testimony.
23 I'm just to read those several factors that he
24 identified to you.

25 First is: The population was clearly

1 chosen and defined. The sample chosen was
2 representative of that population. The data
3 gathered were accurately reported. The data
4 were analyzed in accordance with accepted
5 statistical principles. The questions asked
6 were clear and not leading. The survey was not
7 conducted by -- was conducted by qualified
8 persons following proper interview procedures.
9 And the process was conducted so as to ensure
10 objectivity.

11 Do you agree with those factors?

12 A. Those seem like reasonable factors
13 that one should strive for in data collection,
14 yes.

15 Q. Now, are you familiar with the phrases
16 "recall bias" or "respondent bias"?

17 A. Yes.

18 Q. Okay. And it's a systemic error that
19 is caused by a respondent's failure to
20 completely or accurately recall information
21 being sought by the interviewer; is that
22 correct?

23 A. Would you just repeat? I just want to
24 make sure I agree with you before I say I
25 agree.

1 Q. Fair enough. It is a systemic error
2 that is caused by a respondent's failure to
3 completely or accurately recall information
4 being sought by the interviewer.

5 A. Right. So there are two pieces to
6 this. So one is, you know, responding or
7 recall, and the second part is bias. So bias,
8 as opposed to error when we talk about it, bias
9 is always systemic and pushes respondents
10 towards one direction or another, as opposed to
11 respondent error, which can be inaccurate
12 answers in either direction.

13 So I just want to make sure we're
14 clear on those two, because respondent bias
15 would suggest, you know, a particular direction
16 of the error.

17 Q. Could you have both a recall bias and
18 respondent error as part of the response?

19 A. Typically, when we are looking at
20 measurement error, we look at either error or
21 bias. Because bias would suggest that the
22 question or that the respondents all move in a
23 particular direction in answering the question,
24 whereas error is just an inaccuracy where some
25 people may overestimate, some people may

1 underestimate.

2 Q. My question is whether or not you
3 could actually have both present in a survey
4 response.

5 A. Not with respect to a single question.
6 So a single question is either going to be
7 accurate, potentially fraught with error, or be
8 biased, but not biased and error.

9 Q. With respondent error, is it of
10 particular concern in retrospect -- strike
11 that.

12 Is it only of concern with regard to
13 retrospective studies?

14 A. I just want to clarify some terms.
15 You keep talking about respondent error. And I
16 think the term that I use, because I do
17 research in this area, tends to be response
18 error.

19 Q. Response error.

20 A. So it's not that the respondent is
21 erroneous; it's that their response may be
22 erroneous. And you can have response error in
23 both factual and opinion questions.

24 Q. Let me try to get a clarification on
25 that. What error do you associate with failure

1 of a respondent to completely or accurately
2 recall information being sought by the
3 interviewer?

4 A. I would call that response error.

5 Q. Fair enough. Let's go with that. And
6 back to my question whether or not this
7 particular error is associated principally with
8 retrospective study.

9 A. No, it is not just related to
10 retrospective recall.

11 Q. Okay. It's a survey axiom, is it not,
12 that the further back you ask the respondent to
13 recall the information, the less reliable that
14 information provided by the respondent becomes?

15 A. I think you have been reading my own
16 writing. So I think we want to be perfectly
17 clear on this. When you are asking people
18 about episodic information -- so I'm coming to
19 you and asking you about how many times you
20 went to the dentist; right? Asking you about
21 that for last year is going to have some
22 measurement error associated. If I ask you
23 about how many times you went to the dentist
24 five years ago, you have to search your memory
25 and try to come up with that answer.

1 And when we plot response error
2 related to the recall of episodic information,
3 that is information stored in respondent's
4 memories as discrete episodes, we know that the
5 recall of that information is poorer the
6 further back you ask someone to report.

7 Q. Thank you.

8 A. Let me -- we do not have that same
9 body of empirical literature with respect to
10 going back to asking about issues that are, for
11 instance, when a respondent is reporting for an
12 establishment survey, for which we are not
13 asking them for episodic recall. They're
14 not -- in fact, if we look at the constant sum
15 question, we are not asking them about
16 particular occurrences in their life. We are
17 asking them about a particular year and
18 reporting about how they would have allocated
19 it that year.

20 Q. So my question is whether or not, with
21 regard to what you call an establishment
22 survey -- would you regard the Bortz survey as
23 an establishment survey?

24 A. In both the Bortz and the Horowitz,
25 the respondent is reporting on behalf of the

1 establishment, as opposed to their own
2 personal, you know, life or demographics or
3 opinions.

4 Q. That's a yes?

5 A. I'm getting there. Yes.

6 Q. Okay. Thank you.

7 JUDGE STRICKLER: It was a quick trip.

8 THE WITNESS: Sorry.

9 (Laughter.)

10 BY MR. OLANIRAN:

11 Q. And so with regard to establishment
12 surveys, your testimony is that there is no
13 empirical data as to whether or not the further
14 you go back in time the less reliable the
15 respondent's response is?

16 A. I'm saying that I'm not aware of the
17 same empirical data that we have with respect
18 to asking people episodic information in
19 demographic surveys.

20 Q. What is your opinion?

21 A. Well, clearly, you know,
22 contemporaneous measurement is going to be less
23 fraught with error than when you are asking
24 about things in the distant past, whether that
25 is demographic or establishment. How that

1 memory decay function happens for people
2 responding on behalf of establishments or
3 companies or cable systems is not as clear-cut
4 to me as it is for asking people about their
5 own personal memories.

6 Q. Now, each Bortz survey occurs sometime
7 after the end of the particular royalty year
8 that the survey is designed to study; correct?

9 A. That's correct.

10 Q. And each survey seeks to have
11 respondent recall certain information about the
12 programming during that royalty year; correct?

13 A. Correct.

14 Q. So in the context of the Bortz
15 surveys, you would expect that the further back
16 you ask a survey respondent to recall
17 information about programming, the less
18 reliable their responses would become; correct?

19 A. Well, now you've brought in the word
20 "reliable" again. If the same empirical
21 literature that we know about demographic
22 surveys applied to establishment, yes, the
23 further back you go you would expect there
24 would be less accurate information.

25 However, there are all kinds of things

1 that you can do to improve that, like encourage
2 the respondent to think about the particular
3 reference period of interest. And once again,
4 as I have already said, thinking about going
5 further back with respect to recall of
6 information related to establishments is
7 different than thinking about your own episodic
8 memories.

9 Q. And you certainly, in your testimony,
10 relied on either testimonies from past
11 proceedings as well as some of the Judges --
12 some of the past decisionmakers'
13 determinations; correct?

14 A. Yes, I reviewed prior testimony as
15 well as prior rulings in my consideration.

16 Q. Okay. So you must be aware, then,
17 that the Bortz report was criticized in past
18 proceedings for recall bias issues?

19 A. I do remember seeing that, yes.

20 Q. And according to Mr. Trautman's
21 testimony, actually, the Bortz survey covering
22 the 1983 royalty year was conducted in 1985.
23 I'm not quoting, but paraphrasing his
24 testimony. And he also said that Copyright
25 Royalty criticized the Bortz survey because

1 they were concerned about the ability --
2 because the Tribunal was concerned about the
3 ability of the respondents to recall, in 1985,
4 information about programming actually carried
5 in 1983. Do you recall reading that in
6 Mr. Trautman's testimony?

7 A. I don't remember that particular piece
8 of information, no.

9 Q. I think it should be up on the screen.
10 It's page -- Appendix A, page 11 of
11 Mr. Trautman's testimony -- written testimony
12 do you see that?

13 A. Okay. Now that you have reminded me,
14 yes, I have read this in Mr. Trautman's report.

15 Q. Would you have agreed with the
16 Tribunal's criticism in that case?

17 A. You know, I don't have those
18 questionnaires in front of me, so I don't know
19 how they phrased the questions. But I will
20 take it at face value that their criticism was
21 a valid concern.

22 Q. In preparing your Direct Testimony,
23 did you ask the Bortz Company, or Mr. Trautman,
24 when each of the 2010 through 2013 surveys was
25 commenced and completed?

1 A. You can actually see that in the Bortz
2 report. There is a table that shows the
3 beginning and ending dates of each of the years
4 of data collection.

5 Q. So you are aware then that the 2010
6 survey did not commence until December of 2011;
7 correct?

8 A. I am aware of that, in part, because
9 the Bortz & Associates was waiting to find --
10 was awaiting the results of a pilot study, as
11 well as waiting for the results from -- or the
12 ruling from the Judges in the 2004 to 2005
13 distribution case in order to see if they
14 needed to modify the questionnaire further.

15 Q. I understand. I'm not asking why it
16 was late. I am just asking whether or not you
17 are aware of that.

18 A. I thought I would just offer that
19 there were reasons why they delayed the data
20 collection for that particular year.

21 Q. So you are also aware that the
22 majority of the 2010 survey was conducted in
23 2012; right?

24 A. Let me just grab Mr. Trautman's report
25 to verify that.

1 Q. I don't think you will find that in
2 Mr. Trautman's report, by the way. But if you
3 are not aware, that is fine.

4 A. No, I think it is -- I think the dates
5 of the data collection are somewhere in the
6 Bortz report.

7 JUDGE STRICKLER: We are having a
8 recall dispute. Let's see who's right.

9 (Laughter.)

10 THE WITNESS: Because I know I've seen
11 a table with this. So it's somewhere in here.

12 MR. LAANE: I believe it is Table 2-3,
13 if that helps.

14 THE WITNESS: Thank you. Yes, it is.
15 It is the bottom of page 21 of the Bortz
16 report.

17 JUDGE STRICKLER: Well, that doesn't
18 actually tell you when the majority of the
19 studies were done. That just tells you that
20 was the period in which the studies were done;
21 right?

22 THE WITNESS: Right. I thought the
23 question was referring to when did the field
24 period start and end. But, no, you don't know
25 when the actual -- looking at this table, you

1 don't have the dates of the actual data
2 collection for the majority of the studies.

3 BY MR. OLANIRAN:

4 Q. My question was whether or not you
5 were aware that the majority of the 2010 survey
6 was completed in 2012.

7 A. Right. And, no, before you mentioned
8 that, no, I wasn't aware. Other than looking
9 at this and seeing that because the start date
10 is 12-7-2011 and goes until April of 2012. My
11 assumption was that the majority of it had been
12 in 2012. But I haven't looked at the actual
13 data to see if that is true.

14 Q. Okay. And so the timeline from the
15 end of 2010 to the completion of the survey in
16 2012 is about 16 months, roughly; right?

17 A. It is.

18 Q. Okay. And so it's reasonable to
19 conclude that assuming that the majority of the
20 survey -- since you don't know, let's assume
21 that the majority of the 2010 surveys were, in
22 fact, completed in 2012. It's reasonable to
23 say that those interviews that occurred in 2012
24 for the 2010 survey create significant recall
25 bias issues; right?

1 A. Certainly -- and this is not an ideal
2 time to steal the questionnaire for 2010, but
3 you also have to look at the questionnaire
4 where you see changes that have been made to
5 the Bortz questionnaire over the years and
6 where they clearly reference to the respondent
7 the calendar year they're to be thinking about
8 in answering the question.

9 Q. So we shouldn't take the timeline into
10 account when we evaluate whether or not a
11 particular survey creates recall issues?

12 A. I didn't say that. That's not my
13 testimony. I'm saying that there have been
14 changes made to the Bortz questionnaire that,
15 because of the fact that they don't go into the
16 field until there is a time lag, that they
17 remind the respondent in the phrasing of the
18 question the calendar year that is of interest.

19 Q. Do those changes alleviate the recall
20 issue?

21 A. They certainly remind the respondent
22 that the question wording is referring to the
23 past and not present. And I think on this
24 point if we wanted to look specifically at the
25 Bortz versus the Horowitz questionnaire, there

1 is a key difference --

2 Q. I'm not asking about the Horowitz
3 questionnaire, by the way. Let's -- let's stay
4 with the Bortz questionnaire, if you don't
5 mind.

6 MR. LAANE: Your Honor, if the witness
7 could be allowed to complete her answer.

8 JUDGE BARNETT: I think she answered
9 the question about the Bortz survey.

10 Go ahead, Mr. Olaniran.

11 MR. OLANIRAN: Thank you, your Honor.

12 BY MR. OLANIRAN:

13 Q. Notwithstanding the improvements to
14 the Bortz survey, you would agree though that a
15 16-month time lag between 2010 and the 2012
16 when the surveys were completed does create a
17 recall issue, doesn't it?

18 A. Definitely, the respondent has to work
19 harder to get back to that information. And I
20 think it's also important to just note that in
21 the 2011, 2012 and 2013, you don't see as long
22 of a delay in the field period.

23 Q. Are you aware that a portion of the
24 2011 surveys were also completed in 2012 -- I'm
25 sorry, in 2013?

1 A. Yes, there is a portion completed in
2 2013.

3 Q. There's also a longer timeline for
4 completion -- maybe not as long as the 2010 --
5 is there not?

6 A. No, but you can also see that they
7 start in August of 2012.

8 Q. I understand that they started about
9 the time that they normally would start, but
10 they still have an extended timeline with
11 regard to completion?

12 A. Yes, they did.

13 Q. And that also could create recall
14 issues?

15 A. It could.

16 Q. Did it?

17 A. One cannot know for certain, looking
18 at these data.

19 Q. Can you test for it?

20 A. There is no way, looking at the Bortz
21 data post hoc, to test for that, no.

22 Q. So you didn't test for it?

23 A. Given that there is no test, no.

24 Q. Now, have you mentioned this lag time
25 at all for 2010 and some of the 2011 surveys in

1 your testimony?

2 A. I did not, no.

3 Q. In paragraph -- on page 5,
4 paragraph 11 of your testimony -- just making
5 sure, bear with me. You state -- are you
6 there?

7 A. Excuse me; what paragraph was it?

8 Q. Paragraph 11, page 5, the bottom of
9 page 5. And you state in that paragraph that,
10 "The Bortz survey was designed to address the
11 relevant question of interest." Do you see
12 that?

13 A. I do.

14 Q. What is the relevant question?

15 A. Here, I'm not an economist. I look to
16 how the Judges have in the past discussed the
17 relative valuation. And to me, the relevant
18 question of interest is how should the
19 royalties collected from distant signals be
20 distributed to the various Claimants; right?
21 Those various Claimants are represented in the
22 survey via the different program categories.

23 Q. And with regard to that question, do
24 you agree that the Bortz survey purports to
25 discount the relative marketplace value of

1 different categories of programming as they are
2 organized within this proceeding?

3 A. I believe they do, yes.

4 Q. And so you think the Bortz survey has
5 answered that question?

6 A. I do for not just the question that
7 they used, but who they chose as the
8 respondents.

9 So, you know, one of the issues that
10 clearly there are various opinions on is who is
11 the -- what is the population of interest? Who
12 is the buyer here? And, you know, in the Bortz
13 survey we see a survey of cable system
14 executives; right? And in previous rulings,
15 clearly the Judges have also seen that the
16 buyer, that the population of interest are the
17 cable system executives.

18 Q. And you've used the phrase "relative
19 marketplace value." And so my question for you
20 is what do you understand by the term
21 marketplace?

22 A. Well, it is a hypothetical market;
23 right? So what we're trying -- you know, every
24 one of these cable system executives has paid
25 for being able to transmit these distant

1 signals. Their royalty payments have to be
2 disbursed back to the original holders of the
3 Copyrights. And so there is no true
4 marketplace; right? They are purchasing
5 signals, not categories. They have to -- but
6 the royalties belong back to the original
7 Copyright Owners.

8 Q. So in -- the Bortz survey is asking
9 respondents who are cable system executives to
10 allocate a fixed-dollar amount across the
11 programming categories in these proceedings; is
12 that correct?

13 A. Yes, I think that's a fair
14 summarization of that question.

15 Q. And in this hypothetical marketplace,
16 do you know who the buyer is?

17 A. Well, as I've stated before, right,
18 the buyer here is the cable system executive.

19 JUDGE STRICKLER: Just to be clear,
20 the question asks for an allocation of points,
21 not money; right?

22 THE WITNESS: Let's look specifically
23 at the wording.

24 JUDGE STRICKLER: This is Question 4;
25 correct?

1 THE WITNESS: Right. It is: Assume
2 your system spent a fixed-dollar amount by 2010
3 to acquire all the non-network programming.
4 What percentage, if any, of the fixed-dollar
5 amount..." So it focuses in on a percentage of
6 a dollar amount, not points.

7 JUDGE STRICKLER: Thank you.

8 BY MR. OLANIRAN:

9 Q. And who would be the buyer in this
10 market?

11 A. The person who purchases the distant
12 signals to be transmitted.

13 Q. And who is the seller?

14 A. This is technical from -- I'm not --
15 my expertise isn't in the cable market. I
16 actually don't think I completely know who the
17 sellers are. Probably the producers of those
18 distant signals, since they are purchasing
19 these distant signals.

20 Q. And when you say the producers, do you
21 mean the owners of the programming?

22 A. The owners of the signal. But once
23 again, this is not my area of expertise. I
24 have already admitted to that.

25 Q. I understand that. Because you've

1 agreed that the Bortz results represent
2 relative marketplace value of the different
3 categories of programming, and I'm trying to
4 get an understanding what you perceive to be
5 the marketplace that is being referenced in
6 that standard.

7 A. Well, the marketplace purchasers are
8 the people who purchase the distant signals.

9 Q. I understand that.

10 A. Can I, please --

11 Q. Sure.

12 A. As a survey methodologist, that's the
13 key question to me; not who the sellers are.
14 Because if the purchasers are the cable system
15 executives, that's my population of interest
16 that I have to sample.

17 So not to be kind of, you know, trite,
18 I don't really care as a survey methodologist
19 who the sellers are. Because to me, I need to
20 know who that population of interest is for the
21 survey. And that means I have focus in on who
22 is the buyer.

23 Q. So as a survey researcher, you are
24 looking at the behavior of the buyer in the
25 marketplace, not the behavior of the seller?

1 A. I am looking at to be able to answer
2 this from the perspective of the buyer, yes.

3 Q. As far as you understand, the survey
4 results are just from the perspective of the
5 buyer in the marketplace?

6 A. Well, now you've posed a different
7 question. Maybe some of these are also
8 producers. I don't know whether there are also
9 producers in the survey. I'm looking at them
10 from their behavior of being the purchaser.

11 Q. I'm just trying to get some clarity.
12 And I -- I take your point well. I'm just
13 making sure that I understand what you are
14 saying. That when you are looking at the Bortz
15 survey results, and you agree that the Bortz
16 survey results represent the relative
17 marketplace value of different categories of
18 programming -- and I don't want to misstate
19 your testimony, so correct me if I am wrong --
20 what you're saying is that the relative
21 marketplace value of different programming as
22 presented by Bortz represents the perspective
23 of the buyer?

24 A. That's my interpretation.

25 Q. Okay. Thank you. And do you believe

1 that to be the interpretation of the
2 respondents when they're answering these
3 questions?

4 A. I think they're responding as the
5 people who purchase distant signals.

6 Q. I understand that. But my question is
7 whether or not you believe your interpretation
8 to be the same as the respondents' when they
9 are answering these questions posed by the
10 Bortz interviewer?

11 A. I couldn't answer what frame of mind
12 the respondents are in when answering the
13 question.

14 Q. From the survey researcher stand
15 point, is it your opinion that the Bortz
16 interviewers intended for the respondents to
17 have the buyer's perspective in mind when they
18 are answering the question?

19 A. I think they are -- you know, if you
20 look at the questions, they are asking someone
21 who is responsible for programming decisions.
22 And that's the person -- they're answering
23 questions from the perspective of the
24 importance of programming. That's the frame
25 that they are asked to think about. I'd have

1 to look once again to the introduction to the
2 Bortz questions.

3 But, you know, if we look at, "Can I
4 ask to speak to the person most responsible for
5 carriage decisions for the system?" So that's
6 the frame that the respondent in the survey is
7 introduced; right? And they're being asked to
8 talk about regarding certain programming. So,
9 you know, they are not told you are the
10 purchaser of distant signals. They are being
11 told that the survey is about programming
12 carriage decisions.

13 Q. Just asking them about what they would
14 pay or how expensive and things of that nature;
15 right?

16 A. We can look at the specific
17 questionnaire, but they asked them how
18 important various program categories are; what
19 those program categories would cost in a free
20 and open market; and then how they would value
21 those. Yes.

22 Q. Okay.

23 A. So I just want to be clear; right? My
24 idea about the buyer, that is an issue with
25 respect to sampling frame. The respondent is

1 never told that they are the buyer. That isn't
2 what is introduced to the respondent. They're
3 told that this is a survey about carrying
4 certain programs.

5 And so the questions that they are
6 being asked is about the carriage and
7 importance of certain programming across these
8 distant signals.

9 Q. I'm not sure --

10 A. We have been back and forth on
11 language, and I just want to be perfectly
12 clear; right? When you are designing a survey,
13 you have to make a decision about what is your
14 universe? Who are you going to sample? And
15 the decision by Bortz to sample cable system
16 executives comes, as I understand it as a
17 non-economist, since they are the deciders with
18 respect to which distant signals to purchase.

19 But when they're brought into the
20 survey and the questions, right, the
21 questioners don't say to them -- don't say to
22 the respondent: We are calling you because you
23 are the purchaser of distant signals; we are
24 calling you because you are the person in
25 charge and we're going to talk about, you know,

1 cable systems regarding certain programming
2 they carry. And are you the person responsible
3 for programming carriage decisions?

4 So they are already introducing this
5 issue of program categories to them, as opposed
6 to distant signals.

7 Q. But are you saying that the Bortz
8 survey did not intend to associate making
9 programming decisions with acquisition of
10 programming?

11 A. No, I'm not saying that. They clearly
12 review with the respondent the distant signals,
13 up to eight of them, that are of consideration
14 in answering these questions.

15 Q. So in your view when you look at the
16 survey, would you expect that the person,
17 responsible for acquisition of programming, is
18 also -- strike that.

19 From a survey researcher's
20 perspective, when you are looking at the
21 screening questions, this Question Number 1,
22 are you interpreting that -- are you -- do you
23 understand that the person most responsible for
24 programming carriage decisions also has
25 knowledge about purchasing decisions made by

1 the system?

2 A. Yes, I would think they do.

3 Q. Okay. So there is a link between the
4 program carriage decisions and purchasing
5 decisions; right?

6 A. Yes, I just wanted to be clear,
7 because when I said the buyer, I wanted to make
8 sure that we linked back to the actual wording
9 that was used in the questionnaire.

10 MR. OLANIRAN: Your Honor, I'm not
11 sure whether or not you wanted a clean break.

12 JUDGE BARNETT: Changing topics,
13 Mr. Olaniran?

14 MR. OLANIRAN: Yes.

15 JUDGE BARNETT: This is as good a time
16 as any. We will take our noon recess and we
17 will reconvene at 12:55.

18 (A lunch recess was taken at 11:55
19 a.m., after which the trial resumed at 1:04
20 p.m.)

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1 AFTERNOON SESSION

2 (1:04 p.m.)

3 JUDGE BARNETT: Please be seated.

4 Mr. Olaniran, not to cramp your style,
5 but I'm curious if you have a time estimate for
6 this witness.

7 MR. OLANIRAN: I actually mentioned to
8 counsel for JSC, I'm looking at maybe an hour
9 to an hour and a half, depending on how the
10 conversation goes sometimes.

11 JUDGE BARNETT: And who else is going
12 to be examining this witness?

13 MR. COSENTINO: I will be, Your Honor.

14 JUDGE BARNETT: Mr. Cosentino. Okay.
15 And then redirect?

16 MR. LAANE: Yes, Your Honor. It's
17 going to depend on what else we hear. Right
18 now I don't anticipate much.

19 JUDGE BARNETT: Okay, all right. Like
20 I said, this is in your hands. We're on day
21 four and witness two.

22 (Laughter.)

23 JUDGE FEDER: Just 23 to go.

24 THE WITNESS: I'm sorry.

25 JUDGE BARNETT: No, no, that's --

1 we're -- I'm really actually fascinated by your
2 testimony, but that's my thing, you know.

3 Mr. Olaniran?

4 MR. OLANIRAN: Thank you, Your Honor.

5 CROSS-EXAMINATION -- Resumed

6 BY MR. OLANIRAN:

7 Q. Dr. Mathiowetz, I -- I want to take
8 you back to a discussion you had yesterday, I
9 think, with Mr. Laane with regard to the number
10 of categories you can -- you can focus on in a
11 survey.

12 Do you recall that conversation?

13 A. Well, there were several conversations
14 around that.

15 Q. And I think, you know, this was
16 regarding guidelines regarding how many
17 different categories you can have in a constant
18 sum survey or something to that effect.

19 A. Yes, I remember that.

20 Q. Yeah, and I -- and I think your
21 testimony was that there are no fixed
22 guidelines regarding how many different
23 categories. I think that you testified that
24 the literature mentioned ten, after ten or
25 more, you have to start paying attention,

1 something like that? Is that --

2 A. You know, clearly, including the
3 articles that Dr. Steckel referenced, there's
4 discussion that once you get to ten or more
5 categories, you should consider different
6 methods.

7 Q. Okay. And how are you defining
8 categories?

9 A. So here I would consider a program
10 category is -- is a category. So the constant
11 sum questions that respondents were faced in
12 the Bortz survey, they are making an assessment
13 across five, six, or seven categories.

14 Q. Okay. And so you are considering
15 categories with regard only to the constant --
16 constant sum question?

17 A. Well, that was the nature of the
18 conversation --

19 Q. I see.

20 A. -- I was having with Mr. Laane.

21 Q. Okay, thank you. And do you have a
22 binder of the Program Suppliers'
23 cross-examination exhibits by any chance?

24 A. No, I do not.

25 Q. Okay.

1 MR. OLANIRAN: May I approach, Your
2 Honor?

3 JUDGE BARNETT: You may.

4 BY MR. OLANIRAN:

5 Q. Can you take a look at Exhibit 6020.
6 Oh, I think that exhibit is restricted, but...

7 JUDGE BARNETT: And would you like to
8 close the --

9 MR. OLANIRAN: I don't think we have
10 anyone in the room that is not supposed to be
11 here.

12 JUDGE BARNETT: I don't either, but in
13 case there's anyone in the room who is not --
14 has not signed a nondisclosure agreement or is
15 not privy to confidential information --

16 MR. OLANIRAN: I can just identify the
17 document at the top, and most of the following
18 references actually do not identify that system
19 in particular.

20 JUDGE BARNETT: Okay, thank you.

21 BY MR. OLANIRAN:

22 Q. Dr. Mathiowetz, this is the Charter
23 Cable questionnaire for 2010. Do you see that?

24 A. I do see that.

25 Q. Okay. And this is the -- one of the

1 non-WGN-only questionnaire, right?

2 A. Correct.

3 Q. And do you see the date of completion
4 on that, on the document?

5 A. It's hard to read. It looks like it
6 might be 3/6/12.

7 Q. Okay. That's the same that I read.

8 And I want to ask some questions
9 about -- about the questionnaire, but let's
10 review just briefly the different parts of the
11 questionnaire. Okay?

12 JUDGE BARNETT: Before we proceed,
13 Mr. Olaniran, this has already been admitted?

14 MR. OLANIRAN: Yes, it is.

15 JUDGE BARNETT: Thank you.

16 MR. OLANIRAN: Sorry.

17 BY MR. OLANIRAN:

18 Q. And so Question 1 is the screening
19 section, right?

20 A. Correct.

21 Q. Please go to Question 2b. That is the
22 question that identifies all of the signals
23 carried by -- by this cable system, correct?

24 A. Well, it identifies the distant
25 signals that are the focus. So let me just

1 count how many there are. So there are eight
2 listed here. And if we remember in Bortz --
3 put a limit, so it might not necessarily be all
4 of the distant signals, but it's all of them
5 that are the focus for this interview.

6 Q. Okay. And Question 2b is the -- is
7 the ranking question regarding the importance
8 of the program categories carried by the
9 system. Do you see that?

10 A. Right. This is one of the warm-up
11 questions.

12 Q. Right. And Question 3, another
13 warm-up question, relating to how -- another
14 ranking question related to how expensive each
15 program category is, right?

16 A. Yes.

17 Q. And then Question 4a is the payoff
18 question. That's the constant sum question.
19 Right?

20 A. Correct.

21 Q. Okay. Do you recall average length of
22 the -- of each interview?

23 A. I don't remember that being reported
24 exactly.

25 Q. You don't recall at all?

1 A. You know, something in the 10 to 15,
2 20 minutes, something like that, but I don't --
3 I don't remember that particular number.

4 Q. Okay. It's fine. Now, for each of
5 the -- the questions, for Questions 2, 3, and 4
6 -- I'm sorry, Questions 2b, 3, and 4, would you
7 agree that in order to perform the tasks
8 required by the interviewer, the respondent had
9 to do the following -- and tell me if you agree
10 or disagree. First, they had to listen to the
11 list of signals read by the interviewer as
12 carried by the system, correct?

13 A. Well, that they do to 2a. They listen
14 to that in response -- as part of Question 2a.
15 They don't reread the signals in Question 2b.

16 Q. My question was for the tasks that are
17 required to be done in 2b, 3, and 4, would you
18 agree or disagree that the respondents would
19 have to do the following: Recall -- maybe not
20 listen -- recall the list of distant signals
21 read by the interviewer as being carried by the
22 system. Correct?

23 A. They -- they have to have that frame
24 of reference, yes.

25 Q. Just tell me if you agree or disagree.

1 A. Well, they've just been read that list
2 so I don't think of it as a recall. They've
3 been primed with that at 2a and now they're
4 being asked Question 2b. So, to me, that isn't
5 a recall. They have the frame of reference
6 given them in Question 2a.

7 Q. Okay, fine. And the second -- another
8 task, they have to again listen to a list of
9 program categories identified by the
10 interviewer, correct?

11 A. Yes.

12 Q. Okay. And for the alternate ranking
13 exercise, what they have to do is recall all of
14 the content on the signals that were just read
15 to -- the respondent has to recall the content
16 on the signals that were just read to him or
17 her, correct?

18 A. Well, to answer Questions 2b, 3, and
19 4, their frame of reference should be all of
20 the content on these distant signals, yes.

21 Q. Right. And then they have to recall
22 the content of each of the distant signals,
23 correct?

24 A. Well, they are being -- they don't
25 have to parse it out. They're answering them

1 with respect to the totality of those distant
2 signals.

3 Q. You don't think they have to know the
4 -- the content of each signal?

5 A. No, they do, but they're not being
6 asked to -- to do an evaluation for each of the
7 signals. They're being asked to do an
8 evaluation across those eight signals.

9 Q. Well, I understand your statement. My
10 question is whether or not they have to recall
11 the content -- they have to identify the
12 content through recall of which is signal
13 carried, correct?

14 A. They have to be familiar, yes --

15 Q. Okay.

16 A. -- with the content of each of these
17 signals.

18 Q. Okay. And then in that process also,
19 they have to carve out from that content what
20 content is considered network programming on
21 ABC, CBS, and NBC, correct?

22 A. Correct.

23 Q. And then -- but they also have to
24 remember to keep Fox broadcast station content
25 in and not out of that -- out of that content

1 that they're supposed to be considering; is
2 that correct?

3 A. If that's part of the mix of their
4 signals, yes.

5 Q. Okay. And then they then have to
6 reorganize and aggregate that remaining content
7 that they are being asked to evaluate by the
8 program categories that the interviewer read to
9 them, right?

10 A. Yes.

11 Q. And in this case of Exhibit -- well,
12 in the case of Question 2b, this is the
13 first -- the first time that the respondent
14 will be hearing a list of programs would be in
15 Question 2b, correct?

16 A. Correct.

17 Q. Okay. And then once they reaggregate
18 and reorganize the program in the -- within the
19 program categories that the interviewer has
20 asked them to do, they then perform in
21 Questions 2b and 4 and 3 the ranking exercise,
22 right?

23 A. Right.

24 Q. And then for Question 4, they do the
25 evaluation, the valuation exercise; is that

1 right?

2 A. The constant sum question, yes.

3 Q. And then -- okay. And so I ask that
4 question because when you talk about focusing
5 on categories, so I -- based on what I just
6 read you, I counted -- we have eight signals,
7 right?

8 A. Correct.

9 Q. I counted, I think, eight steps that
10 the respondent has to go through based on what
11 we just went through. And then for the ranking
12 exercise and -- and the -- the ranking
13 exercises and the valuation exercise, there are
14 seven steps, right?

15 A. Well, there are six -- even though
16 there are six categories here.

17 Q. I'm sorry, six categories. Yes, six
18 categories.

19 So you have eight -- eight steps,
20 eight signals, six categories.

21 Now, in that discussion about what to
22 focus on, do the eight steps and the fact that
23 you have to take eight signals and map the
24 content on those signals into six program
25 categories, do you consider that at all as part

1 of the categories you have to -- part of the
2 categories you have to focus on?

3 A. No. I mean, we're talking about
4 apples and steaks. I mean, the question -- you
5 know, when you look at parsing out these six
6 categories, so with respect to the constant
7 sum, there's categories here, right? That's
8 very different than thinking about what are all
9 the cognitive processes. Right?

10 Now, you've parsed this out into this
11 very detailed, right, but that isn't -- that
12 wasn't the focus of Mr. Laane's question, nor
13 is that the consideration when you think about
14 the number of categories for a constant sum
15 question.

16 Q. Well, let's just say the number of
17 things that you have to do in order to get to
18 answer Questions 2b, 3, or 4a. Does -- from a
19 survey researcher's standpoint, does that add
20 to the complexity of the task?

21 A. Clearly, this is not a straightforward
22 task that says, you know, how would you rate
23 your health, excellent, very good, good, fair,
24 poor? We are asking the respondent to, you
25 know, consider these stations, think about

1 these six program categories, and now rank --
2 and now rank them.

3 So this is not, you know, just the
4 most simplest of tasks, but it is not beyond
5 the capability of these executives. And on
6 what basis can I say that, right? We don't see
7 notes here about confusion on the part of the
8 respondent. We don't see missing data. We
9 don't see, you know, any indications in the
10 actual data that they don't understand how to
11 do it.

12 So, yes, we can take and break down --
13 for any question that any survey researcher
14 asks, we can break it down in every single
15 cognitive step and it sounds like a lot, but I
16 have to tell you survey researchers ask complex
17 questions all the time.

18 How many times have you been to a
19 doctor in the past 12 months? Right? That --
20 when you ask a respondent that, they have got
21 to think, past 12 months, what are we counting
22 as a doctor, does it count the phone call? I
23 mean -- and respondents do that very quickly
24 and compute -- compute a response.

25 So, yes, the -- it's actually a wonder

1 with respect to how we're able to process these
2 cognitively, but respondents do do these. And
3 when there is confusion --

4 Q. I think you have answered my question,
5 Dr. Mathiowetz.

6 JUDGE FEDER: Excuse me. Do you know
7 whether the researchers were instructed to make
8 notations when they encountered confusion, if
9 they encountered confusion?

10 THE WITNESS: I -- I do know that, as
11 Mr. Trautman reported, that any confusion was
12 supposed to be signalled to the director of the
13 firm that did the interviewing, and no such
14 confusion was noted.

15 JUDGE FEDER: Okay.

16 BY MR. OLANIRAN:

17 Q. Going back to the question, just in
18 general, Question 4, the respondents have to
19 complete -- have to make the percentages such
20 that everything comes up to 100 percent.
21 Otherwise, it's not a constant sum survey,
22 correct?

23 A. That's correct.

24 Q. So to the extent that they don't --
25 they have no opinion or they don't know, there

1 really is no opportunity to -- to give an
2 allocation less than 100 percent, correct?

3 A. Well, respondents can always report
4 "don't know," and well-trained interviewers
5 know to record that. If a respondent -- I
6 mean, you do not force respondents to answer if
7 they say, you know, I have really no way to --
8 to give you that answer.

9 Q. Doesn't Diamond actually prescribe
10 ways to provide the options for respondents to
11 be able to answer "I don't know" or "I have no
12 opinion"?

13 A. All surveys allow respondents to take
14 -- to report "don't know" or "I have no
15 opinion."

16 Q. That wasn't my question. Actually,
17 doesn't Diamond, your reference guide that you
18 relied on, prescribe --

19 A. I believe she does.

20 Q. Okay. And with respect to Questions
21 2b and 3, which are ranking questions and don't
22 have to add up to any number, does Bortz
23 provide an opportunity for the respondent to
24 say "I don't know" or "I have no" -- or say "I
25 have no opinion"?

1 A. Once again, you don't see that on the
2 questionnaire. You usually don't see that on a
3 questionnaire --

4 Q. Usually don't see that on a
5 questionnaire?

6 A. No, you usually do not see an explicit
7 category for don't know, but interviewers are
8 trained to record that when a respondent
9 reports that.

10 Q. Just give me a minute. Let's go to
11 page 389 of 3011. Are you there?

12 A. I'm there.

13 Q. Okay. And that -- the subtitle of
14 that section is were some respondents likely to
15 have no opinion, and, if so, what steps were
16 taken to reduce guessing. Do you see that?

17 A. I do.

18 Q. And the second paragraph under that
19 heading is -- starts with one of the options
20 that the survey researchers could provide the
21 respondents. Do you see that?

22 A. So --

23 Q. The paragraph that starts with
24 "first."

25 A. I do.

1 Q. Okay. And the first option is the
2 survey can ask all respondents to answer the
3 question. Do you see that?

4 A. I do.

5 Q. And if you flip over to page 390 of
6 that exhibit, the second option talks about the
7 fact that the survey can use a quasi filter
8 section to reduce guessing by providing "don't
9 know" or "no opinion" options as part of the
10 question. Right?

11 A. So that's the provision of an explicit
12 "don't know."

13 Q. Right. Which you just testified that
14 you don't typically see that on surveys?

15 A. No, that -- these are -- you're mixing
16 up my testimony. What Diamond is talking about
17 here is the provision on the questionnaire of
18 an explicit "don't know" and read to the
19 respondent. That is, are you in favor or
20 against gun control laws or do you not have an
21 opinion? That's an explicit, you know, no
22 opinion/don't know.

23 That is different from what I just
24 testified to, which is interviewers are trained
25 that if a respondent volunteers "don't know,"

1 they record that. They do not -- no
2 interviewer and no data collector wants to have
3 data that represent guesses by the respondent.

4 So interviewers are trained to record
5 "don't know." What Diamond is talking about
6 here is the provision read to the respondent of
7 an explicit "don't know."

8 Q. Well, the -- if you go back to page
9 389, the very first sentence in that paragraph
10 B reads as follows: "Some survey respondents
11 may have no opinion on an issue under
12 investigation, either because they have never
13 thought about it before or because the question
14 mistakenly assumes a familiarity with the
15 issue."

16 In Questions 2b and 3, what option
17 does Bortz provide in writing for respondents
18 that don't have an opinion or just don't know?

19 A. Right. So, once again, there is no
20 explicit "don't know" provision in this
21 questionnaire but --

22 Q. Is there --

23 A. Can I please finish?

24 Q. You've answered my question.

25 A. Well, but I think it's important for

1 the record to -- to note that the Bortz
2 interviewers were trained to flag their
3 supervisor when there was any indication by the
4 respondents of confusion.

5 Q. Is this in Mr. Trautman's testimony?

6 A. Yes, it is.

7 Q. Let's go to question --

8 JUDGE STRICKLER: Before you go on,
9 would it have been incorrect, improper survey
10 construction to have included explicit "I don't
11 knows" in the survey?

12 THE WITNESS: Well, can we get 50
13 survey researchers in here and we'll have a
14 debate about that?

15 JUDGE STRICKLER: I think I'm actually
16 talking to one, so you're the one I'd like to
17 answer the question.

18 THE WITNESS: Well, we know that when
19 you explicitly provide "don't know,"
20 respondents will gravitate to it, even if they
21 actually do have an opinion, because they see
22 that as an easy way to get out.

23 So in -- questionnaire designers are
24 very cautious with respect to "don't know" or
25 "no opinion" being explicitly read to the

1 respondent, but are always trained interviewers
2 -- interviewers are always trained to take that
3 information down or to note it rather than
4 forcing a respondent to answer a question that
5 they say "I have no idea."

6 JUDGE STRICKLER: Would it have been
7 improper to have put an express "I don't know"
8 as a choice in either Question 2, 3, or 4? In
9 your opinion? Or you can say "I don't know."

10 (Laughter.)

11 THE WITNESS: Well, I don't think I
12 have that option.

13 If you start to go down this path and
14 this respondent starts to -- says "don't know,"
15 then I think you haven't screened properly for
16 the right respondent. I mean, that really then
17 would suggest you need to find the person who
18 can answer these questions.

19 So if you -- if someone encountered --
20 if an interviewer encountered someone who said,
21 well, I have no idea about that, I couldn't
22 answer your questions, then I think that
23 behooves the interviewer to say: I need to
24 speak to someone who can answer these
25 questions.

1 JUDGE STRICKLER: Given all that,
2 would it have been improper to add an "I don't
3 know" to either Question 2, 3, and/or 4?

4 THE WITNESS: I would probably
5 recommend to Bortz to not include the explicit
6 "don't know" just because I know that survey --
7 survey respondents like to sometimes take the
8 easy route.

9 JUDGE STRICKLER: You say you wouldn't
10 recommend it. Would it be wrong to do so?

11 THE WITNESS: There isn't really
12 anything that's wrong or right in my industry.
13 It's based on what your goal is analytically.
14 And analytically here, we need people to assess
15 these program categories, these five, six, or
16 seven. So if they say "don't know" to one of
17 them, analytically it's not going to be of much
18 use.

19 JUDGE STRICKLER: So if I understand
20 you correctly then, it wouldn't be wrong to add
21 an "I don't know"; it's a judgment call
22 depending on the person constructing the
23 survey?

24 THE WITNESS: That's correct.

25 JUDGE STRICKLER: Thank you.

1 BY MR. OLANIRAN:

2 Q. Dr. Mathiowetz, let's turn to, if you
3 still have Exhibit 3011 in front of you, page
4 388, the very first paragraph. Are you there?

5 A. I am.

6 Q. Okay. And in that first paragraph --
7 and I'll read the very first sentence: "When
8 unclear questions are included in a survey,
9 they may threaten the validity of the survey by
10 systematically distorting responses if
11 respondents are misled in a particular
12 direction, or by inflating a random error if
13 respondents guess because they do not
14 understand the question. If the crucial
15 question is sufficiently ambiguous or unclear,
16 it may be the basis for rejecting the survey."

17 Do you see that?

18 A. I do.

19 Q. And in this quote, Dr. Diamond is
20 warning about the potential perils of ambiguous
21 or unclear questions, correct?

22 A. She is.

23 Q. And keeping that in mind, let's look
24 at Question 2b in Exhibit 6020. Are you there?

25 A. Yes, I am.

1 Q. And this question states, in the
2 beginning, that now I'd like to ask you how
3 important it was for your system to offer
4 certain categories of programming that are
5 carried by these stations, referring to the
6 stations -- distant signals carried by that
7 system, right?

8 A. Yes.

9 Q. And then later on in the paragraph,
10 the question asks the respondent to rank the
11 identified program categories in order of their
12 importance to the respondents, right?

13 A. It asks them to rank them with respect
14 to their importance to the system in 2010.

15 Q. I stand corrected. Yeah. And to be
16 clear, the system carried the programming in
17 the form of signals, not in the form of the
18 program categories that the respondent is now
19 being asked to map the content of those signals
20 into, right?

21 A. I'm sorry, could you repeat your
22 question?

23 Q. I'm saying the system carried the
24 programming in the form of signals, right?

25 A. Yes, they purchased signals, yes.

1 Q. Right. They purchased signals. And
2 they are now asking the respondent to map the
3 compensable content into the program categories
4 used by the survey, correct?

5 A. Correct.

6 Q. Okay. And, again, in order to perform
7 that ranking task, we went through the eight
8 steps a few minutes ago that they have to do,
9 right?

10 A. Yes, we did.

11 Q. Okay. And in the -- in Question 2b,
12 the respondent has been asked to do this task,
13 to do this ranking task, even though it just
14 heard the list of the program categories for
15 the first time in that -- in that question,
16 right?

17 A. Well, that's the goal of a warm-up
18 question, right? The whole reason that you put
19 a warm-up question like Question 2b and
20 Question 3, is to start to allow the respondent
21 to get familiar with these program categories
22 before you get to the key question of interest.

23 Q. Okay. And the question presumes that
24 the respondent's system offered the different
25 categories of programming that have been

1 identified with Question 2b, correct?

2 A. Yes. They were tailored to present --
3 so the Bortz questionnaire presents the
4 categories that are related to the distant
5 signals and only those program categories. So
6 you see, as you look across the surveys, some
7 people were faced with five categories; some
8 six; sometimes seven.

9 Q. So in asking that question do you know
10 what marketplace -- since the question presumes
11 that the respondent's system carries those
12 programs, the programs are somehow embedded in
13 the signals they are carrying, right?

14 So my question is what marketplace was
15 intended for the respondent to contemplate in
16 doing their ranking exercise? Is it a
17 marketplace with -- is it a hypothetical
18 marketplace with regulation or without
19 regulation?

20 A. Well, the question asks them to
21 consider these categories in order of
22 importance to your system in 2010, with 1 being
23 the most important and 6 being the least
24 important, that purchasing of those distant
25 signals is within a regulated industry, right?

1 Q. Well, what I mean by "regulation,"
2 just to be clear, is whether or not section --
3 is it a marketplace where Section 111 is still
4 in effect or is it a hypothetical marketplace
5 where no such regulation exists?

6 A. Well, it's asking them about their
7 importance to their system in 2010, since that
8 regulatory market is in place with respect to
9 Section 111 royalties in 2010. That's the
10 reference that they are using.

11 Q. Okay. Well, let's look at Question 3.
12 In Question 3, the interviewer is looking to
13 know how expensive it would have been for the
14 respondent's system to acquire non-network
15 programming on broadcast stations identified by
16 the interviewer. So the same eight signals
17 and --

18 A. Same -- yes, same eight signals, six
19 categories here.

20 Q. Right. And particularly interested in
21 how expensive -- the ranking and order of how
22 expensive it would have been if the
23 respondent's system had to purchase the
24 programming in the marketplace. Right?

25 A. Yes.

1 Q. Okay. And, again, in order to -- to
2 respond to -- to perform this task, remember
3 the eight steps we talked about earlier in
4 Question 3, the respondent still has to do the
5 same thing, right?

6 A. They still have to have the same frame
7 of reference about these eight signals and rank
8 them with respect to cost.

9 Q. And then with the marketplace also,
10 they would be thinking about the 2010
11 marketplace where the Section 111 was in
12 effect, because they had -- as you responded
13 with respect to 2b, in 3, one would expect that
14 they would be thinking about the same 2010
15 marketplace, right?

16 A. Except the question does start out by
17 saying "directly in the marketplace." So
18 these -- you know, these program categories
19 aren't purchased directly in the marketplace
20 when you're talking about these distant
21 signals.

22 Q. That's correct. I'm not sure I
23 understand what's your point.

24 A. So there's a phrase in the beginning
25 of Question 3, right, that they want to acquire

1 non- -- it basically sets the frame of
2 reference for the respondent to acquire these
3 non-network programming if they could purchase
4 them directly in the marketplace, meaning you
5 go out and purchase the program category, not
6 the distant signal.

7 Q. So the frame of reference in 2b is
8 different from the frame in 3?

9 A. Yes.

10 Q. Okay. And you -- with regard to 2b,
11 they are looking at a marketplace where Section
12 111 -- the compulsory license can exist,
13 correct?

14 A. Correct.

15 Q. And then in Question 3, they are not
16 looking at that; they are looking at -- excuse
17 me, one second.

18 In Question 3, they are looking at a
19 situation where the cable system itself
20 actually goes into the marketplace to acquire
21 programming?

22 A. It is what the phrasing of the
23 question says.

24 Q. At least that's your understanding of
25 it?

1 A. Yes.

2 Q. And were those individual programs
3 or --

4 A. Well, I can only interpret what it
5 says there, if you could purchase the
6 programming directly in the marketplace.

7 Q. Okay.

8 JUDGE STRICKLER: Excuse me. When you
9 see the word "programming" there in Question 3,
10 do you understand that to mean a category of
11 programming or an individual program within --
12 within a particular category?

13 THE WITNESS: To me, the way it's
14 being phrased, that programming, it's a -- I
15 think the respondent -- given that they've
16 already been exposed to these questions or
17 these categories of programming, I would think
18 that the respondent's framing them is about
19 those program categories.

20 JUDGE STRICKLER: So it would have
21 been more accurate to say if your system had to
22 purchase that programming category directly in
23 the marketplace?

24 THE WITNESS: That -- that could be a
25 refinement of that question, yes.

1 JUDGE STRICKLER: Do you think it's
2 ambiguous without the word "category" before
3 the word "directly."

4 THE WITNESS: Given that the
5 respondent is once again listed these six
6 program categories, I don't think it's
7 ambiguous.

8 JUDGE STRICKLER: You think the word
9 "programming" and the phrase "programming
10 category" in the minds of a respondent would be
11 equivalent?

12 THE WITNESS: Well, they may be
13 considering individual programs within those
14 program categories, but they're not -- you
15 know, the response test that they're being
16 faced with is to answer about these six program
17 categories.

18 So they very well may have been
19 thinking about one particular type of, for
20 instance, movie in answering that or a
21 particular type of program with respect to live
22 professional and college sports, but they know
23 they have to answer within these six program
24 categories.

25 JUDGE STRICKLER: Thank you.

1 BY MR. OLANIRAN:

2 Q. The question is not clear, is it?

3 A. Well, I think it is clear.

4 Q. You think? Could -- could the
5 respondents have been thinking about buying --
6 purchasing bundles of programming, the program
7 categories? Could they have been thinking
8 about that?

9 A. Well, whether they're thinking about
10 program categories or programs within those
11 program categories, I don't understand why they
12 are -- what the difference is there.

13 Q. Well, because they are --

14 A. I mean, they're still going to end up,
15 right, in a response category ranking the whole
16 categories. And so, for instance, let's just
17 look at this particular respondent, who says
18 live professional and college team sports is
19 the most expensive, right?

20 Well, we don't know if, when they
21 decided that that ranked the highest, whether
22 that was because the entire category is
23 expensive or that they know to purchase a
24 particular program within that category drives
25 those costs way up.

1 Q. If you were -- if the system was
2 purchasing individual programs and that's
3 what's in the mind of the respondent, is that
4 purchase in your mind different from, say, if
5 the respondent is thinking about purchasing
6 bundles of programming? Do you see a
7 distinction in those two types of purchases?

8 A. Not with respect to thinking about
9 ranking the expense of those. So, you know,
10 they have to consider the entire category.
11 What was the determining factor that drove live
12 professional and college team sports to the
13 first? Was it the entire category or was it
14 because they knew that in order to purchase,
15 let's just take NHL hockey, that they would
16 have to -- that that was quite expensive and
17 that's what drove up that whole category.

18 Q. Now, in just -- in a standard survey
19 -- in survey practice, it's necessary to
20 describe the same construct using consistent
21 language, isn't it?

22 A. That's a vague and ambiguous question,
23 so could you be more specific?

24 Q. Let me simplify it. If you are trying
25 to describe a thing in the survey practice, but

1 you have to use consistent language for that
2 thing every time you make a reference to it?

3 A. Ideally, you do want to use the same
4 language. Sometimes you feel you need to
5 embellish that during parts of the survey.

6 Q. Okay. So let me ask you about the
7 language in Question 3. Question 3 begins by
8 telling the respondent that the question would
9 be about how expensive purchasing programming
10 directly in the marketplace would have been.

11 Do you see that?

12 A. Yes.

13 Q. And then in the second sentence, the
14 question then refers to relative cost of the
15 seven program categories. Do you see that?

16 A. Yes.

17 Q. And then in the next sentence, it
18 reverts back to ranking the program categories
19 in order of how expensive. Do you see that?

20 A. Yes.

21 Q. Then the sentence follows -- the next
22 sentence says that -- excuse me.

23 The next sentence says -- now refers
24 to a cost ranking. Do you see that?

25 A. I do.

1 Q. Now, if you were designing this
2 question, you wouldn't use three different
3 phrases for the same -- for the same thing,
4 would you? Well, strike that.

5 The task that's being required in this
6 question is to rank -- excuse me -- is to rank
7 programming in order of how expensive, correct?

8 A. Expensive -- see, to me, those are
9 similar terms, "expense" and "cost."

10 Q. I understand. But do you think it
11 could be ambiguous as an accounting concept,
12 for example, expense versus cost?

13 A. I don't think it adds ambiguity in
14 this question. And, once again, you know, we
15 don't see indications of the respondent's --
16 indicated confusion.

17 Q. Now, if you were drafting -- if you
18 were designing this question, would you have
19 used those three different phrases, instead of
20 just consistently referring to how expensive?

21 A. This is two different phrases, right,
22 expensive and cost?

23 Q. Well, it's how expensive, relative
24 cost, and cost ranking.

25 A. I think in an ideal world, it would

1 have been useful to have the same language
2 throughout that question.

3 Q. Thank you.

4 JUDGE STRICKLER: Do you understand
5 cost to mean dollar cost, opportunity cost?
6 Both? Neither? Or something else?

7 THE WITNESS: Well, given that they
8 introduced this as expensive and then used the
9 word "cost," I think the frame here is dollar
10 costs.

11 JUDGE STRICKLER: So you -- so you
12 understand that cost, without the phrase
13 "expense" or "expensive," could mean other
14 things, other than just dollar cost, but you
15 think expensive refers -- somehow grounds you
16 in dollar cost?

17 THE WITNESS: I -- I do. And once
18 again, I don't worry as much -- these are
19 warm-up questions. These are really meant to
20 try to drive home the issue of these five, six,
21 or seven categories that are going to be
22 central to Question 4.

23 So I'm not as concerned about the
24 language in Questions 2 and 3, as I would be in
25 Question 4.

1 JUDGE STRICKLER: I'm glad you said
2 that because this phrase "warm-up" has been
3 troubling me. I'm not exactly sure what it
4 means. I mean, you could have shown clips from
5 the different categories. That would have
6 warned them up quite nicely as well.

7 If Questions 2 and 3 don't provide
8 information relating to Question 4, are you
9 saying that the only benefits of Question 2 and
10 3 are that they acclimate the survey respondent
11 to the categories such that when you finally
12 give them Question 4, they're already thinking
13 about the categories, regardless of how they
14 answered Questions 2 and 3?

15 THE WITNESS: From my perspective, I
16 include warm-up questions. And you hate to
17 burden a respondent with a warm-up question
18 with a question you're really not going to use
19 analytically, but, you know, we want them to
20 really understand these categories.

21 And so let's clear out the ambiguities
22 about these program categories and understand
23 the nature of a ranking task before we get to
24 this key valuation question. So from my
25 perspective, I have no problem asking one or

1 two questions to a respondent so that they
2 understand what we're talking about with
3 respect to these program categories and what it
4 means to make these tradeoffs across these
5 before we get to the key valuation question.

6 JUDGE STRICKLER: Which tradeoffs are
7 you referring to?

8 THE WITNESS: Well, meaning, you know,
9 in a constant sum, you have to allocate points
10 across these program categories. To me, that's
11 a tradeoff.

12 JUDGE STRICKLER: So Questions 2 and
13 3, the warm-up questions, are also making
14 tradeoffs?

15 THE WITNESS: Yes, because once I rank
16 one of these program categories 1, I have -- I
17 have to -- I can no longer assign a 1 to any
18 other of the program categories.

19 The task isn't quite the same on the
20 constant sum, because, of course, you can have
21 equal allocations.

22 JUDGE STRICKLER: Thank you.

23 BY MR. OLANIRAN:

24 Q. Let's go to Question 4a. Before I ask
25 you specific questions about Question 4a, on

1 page 13, paragraph 34 of your testimony, your
2 direct testimony, you -- do you have it?

3 A. What page number again?

4 Q. 30 -- page 13, I'm sorry, paragraph 34
5 of your direct testimony.

6 A. I have it. Thank you.

7 Q. Okay. And in that, in paragraph 34,
8 you state that the constant sum methodology is
9 a well-established market tool. And you also
10 quote Samuel Book. And, in fact, you then go
11 on to identify three additional sources of
12 support for that statement, Leonard Reid, Joel
13 Axelrod and Robert Crandall.

14 Now, based on the discovery
15 information you provided to us, Samuel Book's
16 testimony was submitted in August of 1991,
17 which is 27 years ago; is that correct?

18 A. Yes, this cites the 1989 proceedings,
19 yes.

20 Q. And Leonard Reid also was submitted in
21 1991, which also is 27 years ago, right?

22 A. Yes.

23 Q. And Axelrod's testimony would have
24 been about 20-plus years ago. It was 22 years
25 ago. It was submitted in 1996, right?

1 A. That's correct.

2 Q. And Robert Crandall's testimony would
3 have been submitted about 2009, which is about
4 nine years ago, right?

5 A. Well, or seven years ago at the time I
6 was writing this.

7 Q. Fair point.

8 And these old testimonies were not
9 addressing the Bortz questionnaire of the --
10 that are being presented in this proceeding,
11 are they?

12 A. No. They're addressing the issue of a
13 constant sum methodology.

14 Q. Okay. But the -- the issue of
15 constant sum methodology was in the context of
16 whatever Bortz report was submitted in those
17 proceedings, correct?

18 A. That's correct.

19 Q. Okay. Did any of these witnesses --
20 were they in any way involved, to your
21 knowledge, in the development of the current
22 Bortz survey?

23 A. I wouldn't know.

24 Q. Okay. Now, digging into Question 4 a
25 little bit, so the respondent is tasked with

1 making a certain -- going back to Exhibit 6020,
2 and then sort of digging into Question 4. The
3 respondent was tasked with making certain --
4 making a certain relative valuation of these
5 different program categories, right?

6 A. Correct.

7 Q. And according to Bortz, the allocation
8 represents relative marketplace value of the
9 program categories at issue in this proceeding,
10 right?

11 A. Correct.

12 Q. And for this task, the respondent,
13 again, had to go through those eight steps we
14 talked about, which I won't repeat, earlier in
15 our discussion, right?

16 A. Yes, they do have to go through a
17 series of steps that they can integrate to --
18 to produce this response.

19 Q. And so Question 4 opens with the
20 statement that -- that the interviewer would
21 like the respondent to estimate the relative
22 value to the respondent's system of programming
23 broadcast by the signal identified as carried
24 by the respondent in 2010. Do you see that?

25 A. Yes. That isn't the exact words that

1 are used, but -- but that's the -- that's a
2 summary of what's being presented.

3 Q. Okay. Now, again going back to the
4 question of marketplace, in Question 2b, you
5 said the marketplace they would have been
6 thinking about in 2010 was the marketplace in
7 which the compulsory license scheme of Section
8 111 was in effect, correct?

9 A. Correct.

10 Q. In Question 3, I believe you said they
11 would have been thinking about a marketplace in
12 which they purchased directly from the market,
13 correct?

14 A. Correct.

15 Q. Now, in Question 4, what marketplace
16 was the interviewer -- was intended for the
17 respondent to be contemplating in making this
18 valuation -- not valuation -- this allocation
19 task?

20 A. So, clearly, here they are not being
21 referenced to, as they are in Question 3, to
22 directly in the marketplace. So they would be
23 back in the marketplace of the Section 111
24 royalties.

25 Q. Okay. And I want to tax your survey

1 expertise, again, if you will. Did you
2 understand from the review of the questionnaire
3 that the program categories used in 2, 3, and 4
4 were intended to be the same?

5 A. Yes. And I do realize that in
6 Question 4, they did expand on the verbiage
7 around the description of those categories.

8 Q. Now, in -- if you look at the
9 description of syndicated shows, there's a
10 special, for example, when you look at how they
11 are identified, how that category was
12 identified in Questions 2b and 3, merely
13 referred to syndicated shows, series, and
14 specials. Do you see that?

15 A. Yes.

16 Q. And then when you go to Question 4,
17 the label was -- the title -- the category was
18 expanded on a little bit by adding produced by
19 or for any of the commercial stations.

20 Do you see that?

21 A. Are we looking at the syndicated shows
22 category?

23 Q. I'm sorry. Distributed to more than
24 one station.

25 A. Right.

1 Q. Okay?

2 A. Yes.

3 Q. And then if you look at the news
4 programming, which is the one I was looking at
5 earlier, in Question 4 it's news and public
6 affairs programs produced by or for any of the
7 commercial stations. Right?

8 A. Yes.

9 Q. And then if you go back to Questions
10 2b and 3, that category, assuming it was
11 intended to be the same, is described as "news
12 and other station-produced programs," right?

13 A. Correct.

14 Q. And, again, to the extent that these
15 categories were intended to be the same
16 categories, would you -- from your survey
17 experience, the language is inconsistent
18 between -- as between Question 2 and 3 and
19 Question 4, isn't it?

20 A. Well, the categories haven't changed,
21 so there's a consistency with respect to, in
22 this case, the six categories, but obviously
23 they've expanded upon the language here in the
24 description of these six categories.

25 Q. You don't think the respondent would

1 be confused where in Questions 2 and 3 they
2 just had one category, the one label, and then
3 in Question 4, they had a different category
4 and --

5 A. Well, I think it's important -- let's
6 look at the full content of this question,
7 right? The interviewer says: "I'll read each
8 of the six programming categories we've been
9 discussing again to give you a chance to think
10 about them."

11 Okay? So right there, the interviewer
12 is signaling to the respondent that I'm going
13 to reread this litany of these six program
14 categories. I'm not changing the categories,
15 right? So they've expanded the language,
16 absolutely they have, but clearly the
17 interviewer is referencing: But these are the
18 same six programming categories that we've
19 already been discussing.

20 Q. If the interviewer is doing that, why
21 not just leave the program descriptions the
22 same way they were -- they are in Question 2b
23 and Question 3?

24 A. That would have been a question you'd
25 have to have asked Mr. Trautman.

1 Q. If you were doing it, how would you
2 have done it differently?

3 A. I would have probably used consistent
4 language descriptions throughout.

5 Q. Now, you talked a little bit about --
6 with Mr. Laane about the WGN-only
7 questionnaire. Do you recall that --

8 A. I do.

9 Q. -- conversation? And you actually
10 agree with Bortz's creation of a separate
11 questionnaire for WGNA-only systems; is that
12 correct?

13 A. Well, I think it was a step towards
14 addressing issues that have been raised by --
15 in rulings in the past concerning the
16 compensable. So they made a decision to do
17 this for WGNA-only. Clearly, it's applicable
18 to all WGNA stations, but for ease of
19 questionnaire administration, they chose to do
20 these summaries just for WGNA-only.

21 Q. And the WGN-only questionnaires,
22 unlike other questionnaires, actually provided
23 advance program summary to the respondents
24 before the actual interview took place; is that
25 right?

1 A. That's correct.

2 Q. And this is an opportunity that was
3 not afforded the non-WGN-only respondents,
4 right?

5 A. That's correct.

6 Q. And the purpose of this special
7 process for WGN-only system was to allow
8 WGN-only system respondents to consider
9 relative value only of compensable programming
10 on WGNA, right?

11 A. Correct.

12 Q. And is it fair to say that in Bortz's
13 view, without -- in view -- strike that.

14 Like in view of the designers of the
15 survey that without this special treatment for
16 the respondents on WGN-only systems, that those
17 respondents could not distinguish between
18 compensable and non-compensable programs on
19 WGN, right? I know that was convoluted.

20 A. Yeah, can you -- can you rephrase that
21 question. That was a complex question.

22 Q. Fair enough. Fair enough. But the
23 rationale for this special treatment is that,
24 but for the special process, the respondents on
25 WGN-only systems could not distinguish between

1 compensable and non-compensable programming?

2 A. It is to remind the executives who are
3 serving as the respondents about what are
4 compensable and not compensable programs, yes.

5 Q. Well, that's not quite -- you didn't
6 quite answer my question. My question was
7 that, but for this special process, is the
8 rationale that the respondents could not make
9 that distinction between compensable and
10 non-compensable?

11 A. I do not like the use of but-for
12 questions, which are difficult to respond to.
13 I am not saying that executives couldn't know
14 what was compensable, but there's no reason for
15 an executive who is transmitting WGN to have a
16 complete understanding of what are the
17 compensable and non-compensable programs that
18 are being aired.

19 Q. If I understand your testimony
20 correct, it's not required but it helps? Is
21 that a fair way to describe your response?

22 A. Well, clearly in previous
23 considerations and rulings, there was a lot of
24 discussion about compensable programming on WGN
25 and the problem that respondents -- that's --

1 you know, you've been talking about parsing out
2 information. Now you think about these program
3 categories and the WGN-only respondents have to
4 think about, okay, am I thinking about
5 compensable or not compensable?

6 This makes their respondent task
7 easier.

8 Q. Now, there are other systems that
9 carry WGNA plus other distant signals, correct?

10 A. That's correct.

11 Q. And they weren't accorded the same --
12 the same treatment, correct?

13 A. That's correct.

14 Q. And now can we look at -- do you have
15 Mr. Trautman's testimony on you?

16 A. Yes.

17 Q. Let's go to Appendix C.

18 JUDGE STRICKLER: Which testimony?

19 MR. OLANIRAN: Mr. Trautman's
20 testimony, that's Exhibit 1001.

21 JUDGE STRICKLER: His direct?

22 MR. OLANIRAN: The direct, yes.

23 THE WITNESS: The direct?

24 MR. OLANIRAN: Yes. Yes.

25 THE WITNESS: Appendix C, did you say?

1 MR. OLANIRAN: Yes.

2 BY MR. OLANIRAN:

3 Q. Are you there?

4 A. In this copy, it's not clearly marked,
5 but -- Appendix C, but I assume you're looking
6 at the WGNA America 2013 program summary?

7 Q. I was actually looking at 2010.

8 A. I don't have that in this binder.

9 Q. You're not looking at Appendix C-1?

10 A. I don't have something called C-1. It
11 goes -- wait, wait, C-1. Sorry. I have to
12 flip to the back.

13 JUDGE STRICKLER: It doesn't have the
14 word "appendix" on it. It just says C-1.

15 MR. OLANIRAN: I'm sorry.

16 THE WITNESS: I did find a page that
17 said C-1, Appendix C-WGN-only survey
18 instruments. Is that what you're looking at?

19 BY MR. OLANIRAN:

20 Q. That should be it.

21 MR. OLANIRAN: Can I approach, Your
22 Honor?

23 JUDGE BARNETT: You may, yes.

24 JUDGE STRICKLER: It's just --

25 JUDGE BARNETT: There are two page

1 C-1's.

2 THE WITNESS: Yes.

3 JUDGE STRICKLER: That will throw you.

4 JUDGE BARNETT: Judge Strickler's

5 eagle eye figured that one out.

6 BY MR. OLANIRAN:

7 Q. I wish all our other problems could be
8 that easy to solve, right? So let's take a
9 look at question -- Question 2 of -- so we're
10 looking at the 2010 template for the WGNA-only
11 program questionnaire, right?

12 A. Yes, we are.

13 Q. And so in -- if you look at Question
14 2, before the interviewer even asks any
15 question about ranking or valuation, the first
16 paragraph talks about the nature -- nature of
17 the programming, correct, that they want the
18 respondent to focus on, right?

19 A. Are you up at the top of page C-2 --

20 Q. Yes, I am.

21 A. -- where it says "this survey
22 concerns"?

23 Q. Yes.

24 A. Okay.

25 Q. And then the middle paragraph -- this

1 next paragraph focuses the questions on
2 programming on WGNA, right?

3 A. Well, it says that they want to talk
4 about the WGNA programming and they'd like to
5 send them a summary before they do the
6 interview.

7 Q. So, I mean, before they even get to
8 the questions, you have three paragraphs
9 already explaining the programming of interest
10 to the respondent, correct?

11 A. You haven't explained the program
12 categories to them at this point. You've
13 simply said, you know, we're going to be
14 talking about WGNA.

15 Q. Okay. And -- and -- but it does help
16 focus the respondent on what -- the path that
17 the questioning is going to lead in, does it
18 not?

19 A. Certainly, it does, yes.

20 Q. Okay. And so these first three
21 paragraphs, they're geared to elicit
22 information -- makes it clear that they are --
23 that the interviewer is interested in
24 information about compensable programming,
25 right?

1 A. I'm just trying to remember if they
2 use that particular terminology. They
3 certainly don't use the term "compensable," but
4 they are describing the concept to the
5 respondent, yes.

6 Q. Thank you. That's -- and then let's
7 -- let's look at the programming summary that's
8 attached -- the 2010 programming survey, if you
9 will.

10 Are you looking at it?

11 A. I've got it, yes.

12 Q. Okay. And so in the -- in this --
13 this document was provided to the respondent in
14 advance, correct?

15 A. Yes.

16 Q. And then it has program examples, and
17 it has total number of programs, total hours
18 for each program, and the date part summary for
19 the programs. Do you see that?

20 A. Yes.

21 Q. And for the category news and other
22 station-produced programming, the summary
23 identifies very specific shows such as
24 Primetime News, WGN Mid-day News, Cubs, White
25 Sox, and Bulls pre- and post-game shows. Do

1 you see that?

2 A. Yes.

3 Q. And the category for the live team
4 sports, the summary identified very specific
5 sports, Cubs baseball, White Sox baseball, and
6 the Bulls. Do you see that?

7 A. I do.

8 Q. And those teams are clearly playing
9 other teams, presumably, if it's a live -- live
10 team sports, correct?

11 A. Yes, one would hope so.

12 Q. And --

13 JUDGE STRICKLER: Unless it was the
14 Knicks.

15 (Laughter.)

16 BY MR. OLANIRAN:

17 Q. And so this identification of program
18 patterns is sort of consistent if you look at
19 all of the -- all the years' program summaries.
20 I don't know if you had a chance to review this
21 in your -- in your review of the
22 questionnaires.

23 A. I had looked at these program
24 summaries, yes.

25 Q. Okay. And so now for the movie

1 category for 2010, it identifies only feature
2 presentation and feature prime presentation.
3 Now, this is not exactly the same level of
4 detail when compared to the other categories,
5 is it?

6 A. Well, it is akin to, you know, prime
7 news and midday news or akin to, you know, the
8 description of one-time-only specials and
9 special reports.

10 Q. Do news programs have titles other
11 than just news?

12 A. Not that I'm aware of.

13 Q. Okay. And throughout the four years,
14 movies are referred to basically either as just
15 simply movies or I think there was one year
16 that they used the phrase "feature" -- in 2010
17 they used feature presentation, but in other
18 years, I think they also used just the word
19 "movies," right?

20 A. I'd have to go and look at them, but I
21 think you're correct.

22 Q. Okay. And in your mind, just labeling
23 the category as movies is the equivalent of
24 actually identifying White Sox or Cubs baseball
25 or Chicago Bulls basketball?

1 A. You know, I see them as -- as similar
2 because they don't list all of the Cubs'
3 baseball games, the details of those particular
4 games. They -- it's a broad category. One is
5 a feature movie presentation. One is Cubs
6 baseball. I -- you know, they're not listing
7 all of the detailed, you know, exact, you know,
8 Cubs, you know, world series -- well, it wasn't
9 the world series at that point, but, you know,
10 they're not listing, you know, the detail of
11 who they played.

12 Q. So in your view, the respondent
13 equates the -- in your view, in the ears of the
14 respondent, a program category title feature
15 presentation of movies resonates just as well
16 as a program category of sports identifying the
17 major sports franchises that have programs on
18 that -- on their signal?

19 A. I think they're self-explanatory in
20 that, you know, a movie presentation are
21 movies. I mean, they could have listed, you
22 know, all of the movies. I'm not -- with 108
23 hours of programming, that would be a lot to
24 list.

25 The idea here is just to remind the

1 respondent that feature presentations are
2 compensable and need to be considered in their
3 valuations in Question 4.

4 JUDGE STRICKLER: Excuse me,
5 Professor. You say they are self-explanatory,
6 but there are two categories within movies.
7 There's feature prime presentation, and it
8 lists 8.5 hours, and there's feature
9 presentation, which is 108 hours.

10 Do you think "feature prime
11 presentation" is self-explanatory?

12 THE WITNESS: You know, I'm not in
13 this industry, so I assume that it has to do
14 something with the time at which it's on, which
15 is on 7 p.m. on Saturday. So the fact that
16 they've provided the time slots that correspond
17 to these, these presentations, should anchor it
18 for the respondent with respect to what movies
19 they are talking about.

20 JUDGE STRICKLER: So you understand,
21 and with the same caveat I would have, not
22 being in the industry, that prime represents
23 prime time as opposed to a more popular movie.

24 THE WITNESS: Could have. I'm not
25 sure which -- what "prime" refers to here,

1 quite honestly, but I did think when I first
2 saw this that prime, because it was at 7 p.m.
3 Saturday night meant time slot, not, you know,
4 necessarily Academy Award winner.

5 JUDGE STRICKLER: Thank you.

6 BY MR. OLANIRAN:

7 Q. So in your mind, if the program
8 category has simply listed baseball instead of
9 Cubs baseball, would that have made a
10 difference in how the respondents were trying
11 to formulate their response?

12 A. I'm just trying to think if WGNA does
13 any other baseball that isn't either Cubs or
14 White Sox, and I don't know that, so --

15 Q. What if the description had just said
16 basketball without mentioning Bulls?

17 A. Well, once again, I don't know if
18 there are other categories -- I don't know
19 sitting here today if there's other categories
20 of basketball that are transmitted on WGN.

21 Q. Dr. Mathiowetz, I just wanted to get
22 some clarity with respect to your view of the
23 "other sports" category. I think in your
24 testimony you disagree with the creation of the
25 "other sports" category. And if I recall your

1 testimony yesterday correctly, you said you
2 didn't see any justification for it, and one of
3 the factors you mentioned was that it didn't
4 have any air time. Is that correct?

5 A. I think there are two separate points.
6 So, first, no, I didn't see in any of the
7 Program Suppliers experts' justification for --
8 you know, a clear-cut justification for this
9 "other sports" category.

10 And then I think I went to talk about
11 the fact in the Horowitz survey where we see
12 this "other sports" category using examples
13 looking at WGNA plus Public Television, right,
14 when you look at how that category is described
15 to respondents, it's describing that with shows
16 that were not aired on those stations between
17 2010 and 2013.

18 Q. Are you talking about WGN-only
19 stations or WGN plus stations?

20 A. WGN plus stations. That was one of
21 the examples we talked about. And I also did
22 talk about WGN-only.

23 Q. Okay. And what justification would
24 you have had to see to justify the "other
25 sports" category?

1 A. So, you know -- so, first of all, my
2 understanding -- and, you know, I'm new to
3 these proceedings, so maybe my understanding is
4 incorrect, but that there were an agreed-upon
5 set of program categories, right, that have
6 been used traditionally.

7 And those continue to be used, even
8 though for some of them the amount of air time
9 has, you know, significantly decreased in some
10 of those categories over time. So one is kind
11 of the long-established categories.

12 So what would justify bringing in a
13 new category? Well, if you see an entirely
14 different area of programming that wasn't
15 originally represented in these five, six, or
16 seven categories, then that would be
17 justification for including a new category.

18 Q. And so the other sports category --
19 with regard to Mr. Horowitz's survey, the other
20 sports category actually had, relatively
21 speaking, a significant allocation in all four
22 years, correct?

23 A. Well, a significant valuation by the
24 Horowitz respondents, yes, but I already
25 testified that part of that is in part related

1 to the fact that it's misleading and erroneous
2 information in the description of that
3 category.

4 Q. In all instances or in just some?

5 A. I'd have to go back and look. So,
6 once again, here with respect to the
7 identification of the erroneous information,
8 I'm relying on Mr. Trautman's comparisons and
9 his enumeration because, once again, I'm not an
10 industry specialist.

11 My bottom line as a survey
12 methodologist is that if the program category
13 description is erroneous, then you've misled
14 the respondents to think that there's more
15 content in that category than there actually
16 is.

17 Q. Now, are you basing this on just air
18 time?

19 A. No, I'm basing it on the fact that
20 when Mr. Trautman looked at what was actually
21 described as "other sports" and what was
22 actually aired, he identified in his written
23 Rebuttal a litany of erroneous information that
24 was provided to the respondents with respect to
25 the "other sports" category.

1 Q. Can I -- I need to put down what you
2 are describing as erroneous.

3 A. Well --

4 Q. What are you characterizing as
5 erroneous?

6 A. Well, when you say to the respondent,
7 you know, to evaluate a program category that
8 includes figure skating, NASCAR, and I forget
9 what else, and there was no airing of NASCAR or
10 figure skating on that -- on those channels --
11 on that particular distant signal, that is
12 misleading information.

13 Q. Is this including that -- does the
14 question -- does the Horowitz questionnaire say
15 that -- suggest that the program, the program
16 category includes the show or it describes the
17 category and says "such as these shows"?

18 A. I think we have to look because they
19 used both examples that list specific shows as
20 well as "such as," suggesting to the respondent
21 that these are illustrative of the programs
22 that actually did air. And we can look at the
23 specific question wording and document that.

24 Q. Is the questionnaire suggesting
25 programs that did air or suggesting programs

1 that fall within that category?

2 A. The description of the program
3 category includes both.

4 Q. Okay. And with regard to the
5 multi-system respondents and JSC also -- the
6 Bortz survey also has respondents that
7 responded to multiple systems, did they not?

8 A. Right. We looked at that table
9 yesterday.

10 Q. Yes.

11 A. And on average --

12 Q. I understand that. I was here
13 yesterday.

14 A. Okay. Sorry. Don't mean to bore you.

15 Q. So do you understand -- do you know
16 why respondents would have more systems to
17 respond to?

18 A. Yes.

19 Q. Why is that?

20 A. Because -- well, there are two
21 reasons. You want to talk about it with
22 respect to Bortz or with respect to Horowitz?

23 Q. Definitely Bortz.

24 A. Okay. So with respect to Bortz,
25 right, if they start at the cable system, the

1 sampled cable system, and if that person says,
2 Uhm, I'm not responsible for that, you need to
3 go up to, for instance, the regional person,
4 then if that regional executive was responsible
5 for more than one cable system that had been
6 included in the sample, he or she was then
7 reporting for those multiple systems.

8 Q. Okay. Now, on the Horowitz side, how
9 did they approach their screening process?

10 A. They started at the national or
11 regional level and, if they had to, moved down,
12 but started at the national level.

13 Q. Okay. With regard to your
14 understanding of the cable industry, just in
15 general, would you say that over the -- over
16 the last at least five to ten years there has
17 been more consolidation in the -- of cable
18 systems or not?

19 MR. LAANE: Objection, Your Honor, the
20 witness has already testified she is not an
21 expert in the cable industry.

22 JUDGE BARNETT: Sustained.

23 MR. OLANIRAN: I have no further
24 questions, Your Honor. Thank you,
25 Dr. Mathiowetz.

1 THE WITNESS: Thank you.

2 JUDGE BARNETT: Thank you,
3 Mr. Olaniran.

4 Mr. Cosentino, how much questioning do
5 you have?

6 MR. COSENTINO: Ten, 15 minutes.

7 JUDGE BARNETT: We're going to power
8 through then before we take our break. It's
9 just the temperature is going up in here. Feel
10 free to take your jackets off. Do not suffer
11 here. There's no point.

12 THE WITNESS: You've placed the burden
13 on him between all of these people and the
14 break.

15 (Laughter.)

16 JUDGE BARNETT: A method to my
17 madness.

18 MR. COSENTINO: I'm going to take
19 eight minutes.

20 CROSS-EXAMINATION

21 BY MR. COSENTINO:

22 Q. Good afternoon, Dr. Mathiowetz. I'm
23 Victor Cosentino for the Canadian Claimants.

24 A. Good afternoon.

25 Q. I think this morning you touched on

1 the issue of a pilot study in 2009 for the
2 Bortz survey; is that correct?

3 A. Yes.

4 Q. Did you review that pilot study?

5 A. I -- I did not review that
6 questionnaire. I only know that they did
7 conduct that pilot study.

8 Q. Okay. Can you explain what a pilot
9 study is?

10 A. So when you're making changes to a
11 questionnaire, it's often helpful to take that
12 for a test drive, so to speak, to see if
13 respondents understand it, to see if there are
14 problems in the administration of that
15 questionnaire.

16 Q. Is a pilot study the same as
17 pre-testing?

18 A. A pilot study is a particular type of
19 pretest in which it's more like a dry run of
20 the questionnaire rather than other types of
21 pre-testing.

22 Q. When you say other types of
23 pre-testing, what do you mean?

24 A. So there is a whole cadre of
25 activities that we as survey researchers use

1 with respect to pre-testing a questionnaire.
2 Usually, when it's the first time you're
3 putting a questionnaire together, there are
4 things called cognitive interviews. You might
5 run focus groups. You might debrief
6 respondents. So there's -- there's a whole
7 bunch -- a number of different methods.

8 Q. Is the goal to make sure that the
9 respondents understand the questions being
10 posed?

11 A. Yes.

12 Q. Are you aware of whether any type of
13 focus groups or exit interviews or any of that
14 type of things were done in the 2009 pilot
15 studies?

16 A. Well, we don't want to call them exit
17 interviews.

18 Q. I'm sorry.

19 A. That's a whole other work. We don't
20 want to open that can of worms.

21 Q. Okay.

22 A. You know, my understanding is that,
23 no, that they redrafted. I wasn't privy to all
24 of the things that led up to that pilot test.

25 Q. Okay. In questionnaire design, is it

1 important to -- would you acknowledge that this
2 is a fairly complex question, Question 4?

3 A. It is a complex question, but it
4 certainly is one that has been fielded -- a
5 question similar to it has been fielded for 20
6 or 30 years.

7 Q. Okay. But if you were making changes
8 to it, would you engage in some type of
9 pre-testing?

10 A. Do you mean apart from a pilot test?

11 Q. Yes, apart from a pilot test.

12 A. It would depend on how significant the
13 changes were to the wording that had been used
14 in the previous administration.

15 Q. Okay.

16 JUDGE STRICKLER: Excuse me,
17 Professor. You say that although it's a
18 complex question, Question 4, it has been used
19 for 20 or 30 years.

20 Are you making reference back to
21 previous Bortz survey iterations?

22 THE WITNESS: Yes, I am.

23 JUDGE STRICKLER: Have you seen this
24 level of complexity in other survey questions,
25 other than in the Bortz survey?

1 THE WITNESS: You mean apart from
2 these hearings?

3 JUDGE STRICKLER: Yes.

4 THE WITNESS: Oh, yes. This is
5 nowhere near as complex as some of the
6 questions that I've seen.

7 JUDGE STRICKLER: Thank you.

8 BY MR. COSENTINO:

9 Q. Okay. Also -- and I want to jump now
10 to your earlier testimony regarding the Ford
11 Ringold study. And you indicated that small
12 sample sizes in the Ford Ringold study rendered
13 the results unreliable; is that right?

14 A. Right. And they're -- now we're
15 referring to the discussion I had with Mr. Cho
16 with respect to unreliable. That is they
17 have -- you know, it is a small sample, by
18 definition, so it has large confidence
19 intervals around each of those point estimates.

20 Q. Okay. And that's one of the things I
21 wanted to clarify, was which meaning of
22 "unreliable," okay. And it has to do with the
23 wide range of the confidence intervals?

24 A. Correct.

25 Q. All right. And why does small sample

1 sizes lead to that type of unreliability?

2 A. Should we put the formula up for
3 computing variance? So variance takes into --
4 is the square root of PQ divided by N, where N
5 is the sample size. So the smaller the sample
6 size, the larger this number that you're taking
7 the square root of.

8 So when you have a large sample size,
9 right, that number begins to get small, all
10 other things being equal in the design of the
11 survey.

12 Q. Okay. And is that also the case,
13 though, if your universe is small? Do you have
14 wide confidence intervals if you're starting
15 with a small universe?

16 A. Standard errors in confidence
17 intervals come from having -- from -- from
18 sample estimates, not from taking a census.
19 When you start to take a complete census and
20 you have 100 percent response rate, you don't
21 generate confidence intervals because
22 confidence intervals have to do with being able
23 to draw inferences from a sample to the
24 population of interest.

25 Even if you have -- if you have --

1 start out with a small universe, then your
2 sample is going to be small by definition.

3 Q. If you try and question the entire
4 universe and you don't get 100 percent, do you
5 have to treat it as a sample?

6 A. Oh, this is really ambiguous in the
7 literature. So a census is only a census if
8 you take and interview all 100 percent.

9 Q. Okay. But if you're studying a
10 population and you attempt to get 100 percent
11 of the population and then you don't, does that
12 convert your study to a sample or is it still a
13 -- are we still talking about a population
14 where you're not worried about confidence
15 intervals?

16 A. Once you fall back from 100 percent
17 census, you're making inferences from whatever
18 data you have collected to that larger
19 population. And because you don't have
20 observations on every one, you have to express
21 some degree of uncertainty, typically expressed
22 in confidence intervals.

23 JUDGE STRICKLER: Is that a random
24 sample any longer, if you're seeking to do a
25 census and then you only get 90 percent

1 response? That's not a random sample anymore,
2 is it?

3 THE WITNESS: No, it isn't.

4 JUDGE STRICKLER: How do you do
5 confidence intervals with that?

6 THE WITNESS: This is -- we're falling
7 into the world that appears in no statistics
8 books, so, you know, everything that we see
9 with respect to statistical inference is based
10 on the assumption of a simple random sample.

11 JUDGE STRICKLER: Is that where you
12 would then do bootstrapping or something like
13 that out of the --

14 THE WITNESS: Right.

15 JUDGE STRICKLER: -- out of the 90
16 percent to come up with something that has some
17 sort of statistical probability?

18 THE WITNESS: Right. So what you need
19 to do when you're in that world of you've tried
20 to get 100 percent but you didn't get it, but
21 you didn't draw a random sample, is you're
22 trying to convey to your readers that you don't
23 have a point estimate that has observation on
24 everyone.

25 So bootstrapping is one approach that

1 people do to try to provide some -- some
2 suggestion of the variability around a point
3 estimate from this imperfect census.

4 JUDGE STRICKLER: Thank you.

5 BY MR. COSENTINO:

6 Q. So in your report, you -- when you
7 talk about the unreliability on this issue of
8 Ford Ringold because of a small sample size,
9 you said -- you say unlike Bortz. Now, would
10 you consider Bortz to have a large sample?

11 A. Bortz does have observations on 100 to
12 200 cases per year. So, yes, it begins to --
13 it definitely has a much larger sample size.

14 Q. Okay. And within that sample,
15 Canadian signals appear only a handful of
16 times, let's say 15 or less.

17 A. Right.

18 Q. Does that affect the confidence
19 intervals around the Canadian valuation
20 reports?

21 A. Yes. So you have -- you don't have a
22 lot of observations within Bortz around those
23 Canadian -- the valuations of those Canadian
24 signals.

25 Q. Okay. And does that affect the

1 reliability then of Bortz with regard to the
2 valuation of the Canadian signals?

3 A. Yes.

4 MR. COSENTINO: Thank you. I have no
5 further questions.

6 THE WITNESS: You did come in under
7 eight minutes.

8 (Laughter.)

9 MR. COSENTINO: I have to be very
10 careful with my time.

11 JUDGE BARNETT: Thank you,
12 Mr. Cosentino.

13 MR. LAANE: Your Honor, I am going to
14 have a few questions. I don't know -- I'm
15 happy to do them after the break. I just
16 didn't want to get lost in the shuffle.

17 JUDGE BARNETT: A few?

18 MR. LAANE: Yes, Your Honor.

19 JUDGE BARNETT: Can you estimate a
20 time?

21 MR. LAANE: Five to ten minutes.

22 JUDGE STRICKLER: Just for the
23 questions or the questions and the answers?

24 (Laughter.)

25 MR. LAANE: Depends on the witness,

1 Your Honor.

2 JUDGE STRICKLER: It always does. You
3 never know how you're able to estimate an
4 examination when you don't know how much time
5 the witness is going to spend answering.

6 JUDGE BARNETT: If we go ahead, then
7 we can excuse Professor Mathiowetz. Is that
8 correct?

9 MR. LAANE: Yes.

10 JUDGE BARNETT: Yes. Then let's do
11 that.

12 THE WITNESS: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. LAANE:

15 Q. Good afternoon, Your Honors,
16 Dr. Mathiowetz, and I will try to be quick
17 about this. First, if you could --

18 A. And I will too.

19 Q. First, if you could turn to your
20 written Rebuttal testimony and let's look at
21 page 28. And you were asked by Mr. Cho about
22 adjusting Dr. Frankel's estimates. Am I
23 correct that really what you did with
24 Dr. Frankel's estimates was he had reported
25 standard errors, and to get an

1 apples-to-apples, you converted those into
2 confidence intervals?

3 A. That's correct. I have done no new
4 computations. I've just made sure that,
5 because Bortz had produced confidence
6 intervals, that we could look at Dr. Frankel's
7 estimates as confidence intervals rather than
8 standard errors.

9 Q. Okay. And did you or did you not do
10 an adjustment in there for the issue of
11 independence that you were discussing with
12 Mr. Cho?

13 A. I did not. I took at face value
14 Dr. Frankel's standard errors and just made --
15 turned them into confidence -- 95 percent
16 confidence intervals.

17 Q. And did Dr. Frankel or Mr. Horowitz do
18 any adjustment for the independence issue?

19 A. Not to my knowledge, no.

20 Q. Okay. You haven't seen anything to
21 that effect in the record?

22 A. No, I have not.

23 Q. Okay. Now, you mentioned to Mr. Cho
24 that the relative impact of the independence
25 issue was different for Bortz and for Horowitz.

1 Can you explain that for us?

2 A. Well, if we remember back to yesterday
3 afternoon when we looked at the mean number of
4 cable systems that each respondent was
5 responding for, we think of those as -- I'll
6 refer to those as clusters, right?

7 The average cluster size in Bortz is
8 2.2 cable systems that each executive is
9 reporting for. If we think about the Horowitz,
10 we go back to those numbers, the average -- the
11 cluster size was about, I think, 8 or 9, if I
12 remember correctly from that slide.

13 So what you see is that cluster size
14 -- when you compute standard errors, taking
15 into account cluster size, the size of the
16 cluster is what drives up and inflates the
17 standard error. So it's almost as if it's --
18 once again, it's a formula we could go into,
19 but you inflate the standard error estimates
20 that we see in either Bortz or Horowitz by a
21 product of the average cluster size and value
22 called the inner correlation coefficient.

23 So cluster size, you know, we know
24 here the cluster size. Given that the cluster
25 size for Horowitz is four times that of that we

1 see in Bortz, we can make some pretty clear-cut
2 assumptions that the impact on the standard
3 errors is going to be about four times as large
4 for Horowitz than for Bortz.

5 Q. Okay. So what does that mean for the
6 Judges if and when they are assessing the
7 utility of the Bortz confidence intervals and
8 the Horowitz confidence intervals?

9 A. It means that had that adjustment
10 taken place for Bortz, you'd see a somewhat
11 larger confidence interval, and for the
12 Horowitz estimates produced by Dr. Frankel, you
13 would see significantly larger confidence
14 intervals. They would be much, much wider.

15 Q. Jeff, could you give me the ELMO for a
16 moment, please.

17 You were asked by Mr. Olaniran about
18 the reference guide and "don't know" options.
19 I just wanted to ask you about another quote
20 from page 391 of the reference guide. "Recent
21 research on the effects of including a 'don't
22 know' option shows that quasi-filters as well
23 as full filters may discourage a respondent who
24 would be able to provide a meaningful answer
25 from expressing it."

1 Can you explain what this means?

2 A. So this is exactly what I was alluding
3 to when I was providing my answer, that when
4 you give an explicit "don't know," respondents
5 say: Oh, there's an easy way out of this task.
6 I'm going to say "don't know."

7 And so they might have been quite
8 capable of answering, but because you've
9 explicitly offered them this approach, they
10 take it.

11 JUDGE STRICKLER: It says on that same
12 sheet that one solution is to instruct the
13 respondents to not guess. Was that included in
14 the Bortz survey?

15 THE WITNESS: I -- I do not believe
16 there's any specific instruction with respect
17 to guessing or not guessing.

18 JUDGE STRICKLER: Thank you.

19 BY MR. LAANE:

20 Q. You were asked about your review of
21 prior -- of testimony from prior proceedings on
22 the constant sum survey being an established
23 and appropriate methodology for the Bortz
24 survey.

25 Can you tell us whether or not that

1 remains true as of today, that the constant sum
2 survey is an accepted and appropriate
3 methodology for the survey?

4 A. Yes. And the only reason I cited to
5 that literature is that literature or those
6 citations were in the record with respect to
7 the constant sum use in these particular
8 hearings. There certainly are robust empirical
9 literature that has data on the use of constant
10 sum questions in, you know, 2000 through 2017.

11 Q. Thank you.

12 MR. LAANE: I have nothing further.

13 JUDGE BARNETT: Any questions from the
14 bench? Okay. Thank you. We will be at recess
15 for 15 minutes. Recess for 15 minutes.

16 And thank you, Professor Mathiowetz.
17 You may be excused.

18 THE WITNESS: Thank you.

19 (A recess was taken at 2:40 p.m.,
20 after which the trial resumed at 3:03 p.m.)

21 JUDGE BARNETT: Good afternoon. All
22 but the witness please be seated.
23 Whereupon--

24 MARCI BURDICK,
25 having been first duly sworn, was examined and

1 testified as follows:

2 JUDGE BARNETT: Please be seated.

3 MR. STEWART: Thank you, Your Honor.

4 JUDGE BARNETT: Mr. Stewart?

5 MR. STEWART: First I would like to
6 thank the parties and the Judges for
7 accommodating our witness' schedule issues.
8 She has got work commitments tomorrow morning
9 and elsewhere and will be traveling in the
10 following week.

11 And the parties agreed that we could
12 present our first witness out of order.

13 But I wanted also to alert the Judges
14 that we have gotten informal cross-examination
15 estimates that total an hour and 40 minutes.
16 So we're going to do a lightning round version
17 of our direct testimony to accommodate our
18 colleagues here, but we may have another bridge
19 to cross at 4:30.

20 JUDGE BARNETT: Thank you.

21 DIRECT EXAMINATION

22 BY MR. STEWART:

23 Q. Please state your name.

24 A. Marci Burdick.

25 Q. What is your current employment?

1 A. I am Senior Advisor to Schurz
2 Communications located in South Bend, Indiana.

3 JUDGE FEDER: Could you spell your
4 name for the record, please?

5 THE WITNESS: Yes. It's M-a-r-c-i,
6 B-u-r-d-i-c-k.

7 BY MR. STEWART:

8 Q. During 2010 to '13, what media
9 properties did Schurz Communications own?

10 A. Schurz Communications owned radio
11 stations, television stations, cable systems,
12 and newspapers.

13 Q. Now, how long have you personally been
14 in the broadcasting industry?

15 A. Since right after I graduated from
16 high school for the next 42 years.

17 Q. Okay. And over that course of time,
18 what positions have you held?

19 A. I started on the news side as a
20 weather and then news anchor and reporter, and
21 then I became a news director, television
22 station general manager, vice president of
23 television for our company, and then senior
24 vice president of the Electronic Division,
25 which in our world was radio, television and

1 cable.

2 Q. Okay. And have you also been active
3 in broadcast industry organizations?

4 A. I have.

5 Q. Which organizations?

6 A. I have been active in several,
7 including the National Association of
8 Broadcasters where I served on the board, the
9 Executive Committee, and as chairperson of the
10 television board.

11 I have been active with the Radio
12 Television News Directors Association, and
13 served as a board member and chairman.

14 And I have been active with the NBC
15 affiliate associations, where I was chairman,
16 as well as a board member; the Carole Kneeland
17 Association For Responsible Journalism, where
18 I'm a board member.

19 Q. And based on your experience in the
20 industry, are you knowledgeable about the kinds
21 of programming that commercial television
22 stations produce?

23 A. Yes.

24 Q. Have you also had experience -- you
25 mentioned being president of the Electronic

1 Division involving cable television -- have you
2 had experience in that connection with cable
3 television?

4 A. Yes.

5 Q. And what is the nature of that
6 experience?

7 A. Well, from 2003 to 2012, the general
8 managers of the cable systems reported to me.
9 We operated in a very decentralized and
10 autonomous way. So I supervised basically
11 their economic and strategic plan performance.

12 And then in 2012 we named a vice
13 president of cable, and he reported to me.

14 Q. Now, Ms. Burdick, what were you asked
15 to do in this proceeding on behalf of the
16 Commercial Television Claimants?

17 A. I was asked to talk about the
18 locally-generated programs that commercial
19 television stations would do, in addition to
20 talking about distant signals.

21 Q. And I have -- I have put in front of
22 you a copy of what has been admitted into
23 evidence in this case as Exhibit 2003.

24 A. Um-hum.

25 Q. Is that your written statement?

1 A. It is.

2 MR. STEWART: Your Honor, we proffer
3 Ms. Burdick as an expert in commercial
4 television broadcasting.

5 JUDGE BARNETT: Hearing no objection,
6 Ms. Burdick is so qualified.

7 MR. STEWART: Thank you.

8 BY MR. STEWART:

9 Q. So, Ms. Burdick, would you first
10 describe generally the kinds of programs that
11 commercial television stations produce for
12 broadcasts in their home markets?

13 A. On a daily basis, local stations
14 primarily produce local news. It would be at
15 various day parts, morning, mid-day, late
16 afternoon, early evening, late evening.

17 Those newscasts would consist of both
18 hard news, feature news, consumer news, medical
19 news, about the local as well as the regional
20 area.

21 Local weather reports on both a
22 regular and an emergency basis. It would also
23 consist of local sports, covering local sports
24 or college teams of local and regional
25 interest.

1 But, in addition, local stations also
2 produce content in a specialized way or special
3 programs that may surround local sporting
4 events or college teams with pre- and
5 post-coaches shows, game day coverage around
6 the sporting event itself.

7 Weather coverage on a severe basis
8 could be wall-to-wall weather coverage, could
9 be special coverage.

10 During political seasons, debates,
11 additional political coverage, or programs of
12 community concern, whether that be a telethon
13 to support fund-raising after a local community
14 disaster or a parade or a local basketball
15 game, those kind of programs.

16 Q. Now, you say at the beginning of
17 paragraph 7 on page 3 of your statement that
18 these programs "help define the unique identity
19 of each station distinct from other stations."

20 What did you mean by that?

21 A. In our company we used to ask our
22 operators to be able to say what they're famous
23 for in terms of their local content. And that
24 content is different station-to-station in
25 every market. It might be, as an example, a

1 station with a lighter life-style form of
2 coverage in the news.

3 It might be a hard news and
4 investigative station. It might be a station
5 that focuses on the seniority and longevity of
6 its anchor team and reporters. Nonetheless, it
7 is different station-to-station and it forms
8 their mission, their branding, and their
9 marketing statements.

10 Q. Now, let's talk a bit about the
11 specific examples of station-produced programs
12 you describe.

13 Let's turn first to Exhibit -- what
14 has been marked as an attachment to your
15 Exhibit 2003, Burdick Exhibit A-1, which is a
16 map.

17 Do you see that?

18 A. I do.

19 Q. Could you describe -- first of all,
20 where did this map come from?

21 A. This map was produced by Dr. Bennett
22 using data from CDC, or the Cable Data
23 Corporation.

24 Q. And Dr. Bennett is another CTV witness
25 who will be appearing next week.

1 And just describe for us generally
2 what is shown on this map?

3 A. Well, as it is labeled, it is Form 3
4 subscriber groups receiving WSBT as a distant
5 signal in 2012. And its components, the X is
6 WSBT, which was the then Schurz-owned CBS
7 affiliate in South Bend, Indiana.

8 The yellow is its Designated Market
9 Area, or DMA for short, which is the area that
10 Nielsen defines and rates as the South Bend
11 market.

12 The other colors around that are the
13 adjacent other market areas. The circle is a
14 150-mile radius around WSBT. And the red dots
15 are those cable communities that import WSBT as
16 a distant signal.

17 Q. Okay. Now, what kinds of programs did
18 WSBT produce during 2010 to '13?

19 A. Well, as I mentioned, they produced a
20 full complement of daily news, which in WSBT's
21 case was two hours in the morning, half hour
22 mid-day, 90 minutes in the afternoon through
23 early evening, and a half an hour late evening
24 at 11:00 o'clock.

25 In addition to that in that time

1 period, as you might imagine being in South
2 Bend, Indiana, coverage is all things Notre
3 Dame. And so WSBT also produced a significant
4 complement of Notre Dame sports coverage.

5 Q. Now, do you have a view, Ms. Burdick,
6 about whether those programs that you just
7 described are likely to have had value to the
8 cable operator that carried the station as a
9 distant signal in the number of its communities
10 that are shown on Exhibit A-1?

11 A. I have a view.

12 Q. What is that view?

13 A. I think that locally-generated content
14 is important and interesting to those cable
15 subscribers in those communities.

16 Q. What do you base that view on?

17 A. Well, if you look at the map, I think
18 it is illustrative that the cable system, the
19 MVPD of which these communities are a part, the
20 large MVPD stretches from Champaign, Illinois
21 in a swath all the way up to and including
22 Michigan.

23 But those counties are obviously on
24 the Indiana side of their system. Those are
25 Indiana voters. They are Indiana taxpayers.

1 They would have a high degree of interest in
2 Indiana news that would come out of WSBT versus
3 the CBS station in Illinois.

4 You know, and additionally I would
5 point out WSBT is well-known for its weather
6 coverage. That area, it's interesting to me,
7 and anybody who has ever lived in Chicago,
8 that's the tip of Lake Michigan that gets an
9 effect called lake effect snow, which can be a
10 dumping of snow in a very narrow geographic
11 band.

12 So I think that's important to those
13 people as well.

14 Q. Before we leave this exhibit, you,
15 yourself, are a cable subscriber; is that
16 correct?

17 A. I am.

18 Q. And is Comcast, the same Comcast
19 system, your cable provider?

20 A. It is.

21 Q. Where is your system?

22 A. If you go straight north of that X on
23 to the state line and draw another X, my home
24 straddles the state line. The front part of it
25 and the house is in Michigan. So I am a Niles,

1 Michigan resident. My backyard is in Indiana.

2 Q. And on your cable service, how many
3 television stations either local or distant are
4 from Michigan?

5 A. One.

6 Q. And is it a distant signal?

7 A. It is.

8 Q. And from your perspective, is that an
9 important signal to have?

10 A. It is.

11 Q. Why?

12 A. Yeah. I'm a Michigan voter. I'm a
13 Michigan taxpayer. It is my sole source, other
14 than the Internet, of information on those
15 issues in Michigan.

16 Q. Okay. Let's take a look at one other
17 example, your Exhibit A-2.

18 Now, this map has similar elements,
19 and what does it show that's different from
20 A-1?

21 A. Yeah, same 150-mile radius. This is
22 WDBJ, Roanoke, Virginia market. WDBJ is on the
23 Roanoke side of the Roanoke/Lynchburg market as
24 evidenced by the X. Yellow is its DMA or its
25 market.

1 JUDGE BARNETT: Did you pick this
2 because it's my hometown?

3 THE WITNESS: Is it your hometown? Do
4 you know WDBJ?

5 JUDGE BARNETT: Oh, yes.

6 THE WITNESS: Okay.

7 MR. STEWART: Oh, my.

8 THE WITNESS: Well, then good, you
9 probably know more about this than I do.

10 JUDGE BARNETT: It has been a long,
11 long time.

12 THE WITNESS: So the counties around
13 it are the other adjacent markets. And then
14 there are three colors of dots here, which are
15 three separate MVPDs, and their systems which
16 import WDBJ as a distant signal.

17 BY MR. STEWART:

18 Q. And so there are some of those dots
19 that are even farther than 150 miles from WDBJ.

20 Is it your view that the programming
21 on WDBJ would have interest even there?

22 A. They are still in Virginia. I think
23 for the same reason, Virginia voters/Virginia
24 taxpayers.

25 Q. And so what kind of programming does

1 WDBJ provide during this 2010 to '13 period?

2 A. In addition to the same full
3 complement of local news that I provided, I
4 think it is important to point out WDBJ's case.

5 As you probably know, they have been a
6 historic number 1 station for years and years
7 and years in the market.

8 And, in addition to the normal kinds
9 of daily news coverage they do, they are the
10 only station or were at that point in time to
11 staff the Virginia legislative session and
12 cover it on a daily basis. They did special
13 programming related to that. The Governor's
14 inauguration is an example.

15 But they also are a prime station to
16 carry Virginia Tech sports and do a significant
17 amount of coverage around Virginia Tech sports.
18 I think in that period of time they actually
19 went to a bowl game.

20 Q. I am a graduate of the University of
21 Virginia, and I can't imagine anybody being
22 interested in that.

23 (Laughter.)

24 BY MR. STEWART:

25 Q. So let's just go to the last question

1 that I asked you on your direct.

2 First of all, your Exhibit A-3 shows
3 similar examples for another market; is that
4 right?

5 A. Yes, Springfield, Missouri.

6 Q. Let's not go through that in detail.
7 That's in your testimony itself.

8 But I want to turn now to the -- to
9 the Schurz-owned cable system in Hagerstown,
10 Maryland. It's called the Antietam system; is
11 that correct?

12 A. Yes.

13 Q. Now, can you tell us what distant
14 signals Antietam cable -- I'm sorry, did
15 Antietam cable carry WJZ from Baltimore as a
16 distant signal 2010 to '13?

17 A. It did.

18 Q. Why did it do that?

19 A. WJZ provides a high complement of
20 sporting news out of the Baltimore teams, the
21 pro teams, the Ravens and the Orioles
22 specifically. They provide a large degree of
23 local coverage, pre- and post-game coverage,
24 daily news coverage about those teams.

25 That is important to the consumers in

1 Hagerstown, Maryland. But also Hagerstown is
2 part of the Washington, D.C. DMA. Like the
3 other examples I have cited, Maryland voters
4 have an interest in Maryland news, and so
5 that's important to our customer base.

6 And, thirdly, there is a significant
7 amount of commuting that goes into Baltimore,
8 largely for air service.

9 So on a daily basis, our customers are
10 also interested in traffic, weather, that kind
11 of thing.

12 Q. That system is located in Maryland.
13 Doesn't it have a lot of Maryland stations
14 available to it?

15 A. It is part of the Washington DMA.

16 Q. And what kind of -- what stations does
17 it have, does it offer its subscribers?

18 A. In the Washington DMA?

19 Q. Yeah.

20 A. It has all of the Washington
21 commercial and non-commercial stations in the
22 system, and then WJZ out of Baltimore is a
23 distant signal.

24 Q. Okay.

25 MR. STEWART: I have no further

1 questions at this time. Thank you.

2 JUDGE BARNETT: Thank you, Mr.

3 Stewart. Cross-examination?

4 MS. DOMINIQUE: Good afternoon, Your

5 Honors.

6 CROSS-EXAMINATION

7 BY MS. DOMINIQUE:

8 Q. Good afternoon, Ms. Burdick.

9 A. Good afternoon.

10 Q. I am also from Michigan so I will
11 greet you like this (indicating).

12 My name is Alesha Dominique, and I
13 represent Program Suppliers. I am going to ask
14 you a few questions about your oral and written
15 testimony today.

16 Ms. Burdick, Schurz Communications
17 owned three cable systems between 2010 and 2013
18 inclusive, correct?

19 A. Correct.

20 Q. And Schurz also owned several
21 broadcast stations during that time period as
22 well?

23 A. Yes.

24 Q. So during that time period, 2010
25 through 2013, Schurz owned both broadcast

1 stations and cable systems, correct?

2 A. Yes.

3 Q. Were the broadcast stations affiliated
4 with any networks, so ABC, CBS, NBC?

5 A. They were.

6 Q. Ms. Burdick, in your various roles at
7 Schurz, have you been at one point in time
8 responsible for the company's broadcast
9 operations as well as its cable operations?

10 A. Yes.

11 Q. Let's talk about your work with the
12 broadcast stations that Schurz owned.

13 Were you the person who would have
14 been responsible for acquiring programs for
15 broadcast stations?

16 A. No. May I correct that?

17 Q. Sure.

18 A. When I served as a general manager at
19 WAGT from 2000 to 2002, I was responsible for
20 acquiring programs for WAGT in Augusta. But
21 those decisions in our company were made at the
22 local level by our operators.

23 Q. Did you supervise the operators who
24 were then in charge with acquiring programs?

25 A. Yes.

1 Q. So based on your experience and your
2 supervisory role, do you know how programming
3 decisions are made by broadcast stations when
4 it comes to acquiring content?

5 A. I do.

6 Q. Now, you testified about the kinds of
7 CTV programs Schurz' broadcast stations
8 produced in 2010 through '13.

9 A. Um-hum.

10 Q. Did these broadcast stations also
11 acquire programming that they did not produce
12 themselves during that time period?

13 A. Some.

14 Q. Okay. Did this acquired programming
15 include non-network programming?

16 A. Yes.

17 Q. Did the non-network programming
18 include syndicated series and perhaps movies?

19 A. Yes.

20 Q. When Schurz' broadcast stations sought
21 to acquire programming, such as syndicated
22 series or movies, did the broadcast stations
23 negotiate directly with the sellers of those
24 programs?

25 A. Yes.

1 Q. In your written report you testified
2 about the value of programming on distant
3 signals.

4 What do you mean when you use the word
5 "value"?

6 A. I mean what I believe is important to
7 consumers and what is important to the system.

8 Q. When Schurz' broadcast stations
9 negotiated with sellers of syndicated
10 programming, did the stations consider the
11 value, as you have defined it, of a program in
12 deciding whether to acquire the program?

13 A. Yes.

14 Q. What factors did they consider in
15 determining the value of a syndicated program?

16 A. In my case as a general manager, I
17 would consider what I believed was the
18 composition of my market, the interest in
19 viewing that program, the cost of that program
20 relative to my station's economic situation,
21 the attractiveness to advertisers, the ability
22 to sell advertising in that program. Those
23 would be some factors.

24 Q. So in determining value -- and maybe
25 this was captured in your recitation -- would

1 the broadcast stations consider the anticipated
2 audience size that would watch a particular
3 program?

4 A. Yes.

5 Q. And in the case of a syndicated
6 program, would the broadcast stations, were
7 they likely to infer from the program's
8 performance on-network whether it would be a
9 popular syndicated program in an off-network
10 market?

11 A. Well, we would certainly hope that
12 would be the case, yes.

13 Q. And I think you also just testified to
14 this.

15 Did your broadcast stations also
16 consider the audience demographic in
17 determining value?

18 A. Yes.

19 Q. What about day parts, did day parts
20 factor into determining the value of a program
21 to be acquired?

22 A. Where it could be aired in terms of
23 day parts?

24 Q. Correct.

25 A. Yes.

1 Q. In your direct testimony you stated
2 that your work in the television industry
3 included direct experience with advertising
4 sales and purchasing, correct?

5 A. I never sold advertising, but I did
6 oversee the process, yes.

7 Q. So in overseeing the process, were you
8 directly involved in or did you sort of
9 supervise the sale of ad spots that are within
10 the programming that airs on broadcast
11 stations?

12 A. I supervised the general sales
13 managers who supervised that process, yes.

14 Q. Did Schurz' broadcast stations have
15 national ad sales?

16 A. We did.

17 Q. And -- and what about local ad sales?

18 A. Yes.

19 Q. When your general managers negotiated
20 with buyers of ad spots, what factors were
21 considered in determining the price that the
22 broadcast stations were willing to accept from
23 an ad spot buyer?

24 A. Largely ratings, what demographic they
25 were buying, what was the rating in share in

1 those programs that is attributable to the
2 station or the program, scarcity, how many
3 spots are available.

4 If there were fewer spots, they might
5 be worth more money than a program where there
6 are more spots, kind of thing.

7 JUDGE BARNETT: Ms. Burdick, when you
8 say ratings, are you referring to Nielsen's
9 viewing ratings?

10 THE WITNESS: Yes.

11 BY MS. DOMINIQUE:

12 Q. So, Ms. Burdick, would you agree that
13 broadcasters care about viewing?

14 A. Yes, broadcasters care about viewing.

15 Q. Let's talk about your work on the
16 cable operator side of Schurz' business
17 operations.

18 A. Um-hum.

19 Q. So I believe you just testified that
20 during the 2010 through '13 time frame, Schurz
21 owned three cable systems?

22 A. Correct.

23 Q. One in Maryland, one in Arizona, and
24 one in Florida, correct?

25 A. Correct.

1 Q. Were you the person responsible for
2 programming decisions for those cable systems?

3 A. No.

4 Q. Okay. And who was?

5 A. The general managers of each system
6 were responsible for their programming
7 decisions.

8 Q. And did you oversee those general
9 managers or otherwise supervise them?

10 A. I did.

11 Q. Okay. And so are you generally aware
12 of how programming decisions are made by
13 Schurz' cable systems?

14 A. I am.

15 Q. And specifically do you know how
16 programming decisions are made by Schurz' cable
17 systems as it relates to distant signal
18 carriage?

19 A. I do.

20 Q. Let's talk about those programming
21 decisions.

22 When Schurz makes a programming
23 decision about whether to carry a distant
24 signal, it is usually a decision about whether
25 to carry a broadcast station in its entirety,

1 correct?

2 A. It is a decision about carrying a
3 broadcast system in its entirety, recognizing
4 that we are often not able to air all of the
5 programs in a 24/7 basis. So we have to
6 determine what programming is of interest.

7 Q. Are you able to excise the programming
8 that is not of interest?

9 A. We are required, in the case of the
10 map we showed with WSBT, those systems that
11 import WSBT as a distant signal are required to
12 black out network programming and syndicated
13 programming that would be contractually
14 exclusive in the Chicago market.

15 The same would be true of our system.

16 Q. Does Schurz' cable system -- do
17 Schurz' cable systems license individual
18 programs on broadcast signals?

19 A. No.

20 Q. And they don't license categories of
21 programs on broadcast signals?

22 A. I don't know what you mean by
23 categories of programs.

24 Q. Okay. Are you aware of the distant
25 programming categories at issue in this

1 proceeding?

2 A. I am not.

3 Q. Let's say, for example, maybe use our
4 category of programming, do Schurz' cable
5 systems license movies on broadcast signals?

6 A. No.

7 Q. Ms. Burdick, would you agree that
8 subscriber retention is very important to
9 Schurz' cable systems?

10 A. Yes.

11 Q. In order to retain subscribers, it is
12 important for Schurz' cable systems to provide
13 programming that their subscribers want to
14 watch, isn't it?

15 A. Yes.

16 Q. Is it fair to say that most people who
17 sign up for cable through your systems do so
18 because they want to watch the programs that
19 are provided by your cable systems?

20 A. That are important to them, yes.

21 Q. And I believe in your written
22 testimony you stated that the three cable
23 systems that Schurz owns are small?

24 A. They are.

25 Q. What do you mean by "small"?

1 A. Well, I mean the communities are not
2 large communities. The cable industry is
3 increasingly consolidated and large.

4 And our systems, we had three
5 standalone, separate systems in relatively
6 smaller markets. That's what I mean.

7 Q. And given their size, is it correct to
8 say that Schurz' cable systems must
9 continuously evaluate the cost/benefit of
10 channel carriage?

11 A. Sure.

12 Q. In order to determine whether the
13 benefits of carrying a channel outweigh its
14 cost, what factors does Schurz consider?

15 A. You know, I bet if you asked all three
16 of our general managers, you might get
17 different answers to that question.

18 So in general I would say what are --
19 what is the unique and compelling content on
20 each of those signals and what is the interest
21 to that market or to the consumer in that
22 market.

23 Q. Do you have a sense for how consumer
24 interest may be measured?

25 A. In general or --

1 Q. In a particular market.

2 A. I do.

3 Q. And can you describe that?

4 A. Generally in our cable systems, we
5 rely on -- we're talking about Antietam
6 specifically. We do purchase the Nielsen diary
7 for the Washington, D.C. market.

8 In addition, we have set-top box data
9 that we review cumulatively.

10 And, thirdly, and uniquely, I think,
11 to Schurz, we still operate local customer call
12 centers or did at that period of time, so could
13 record and were aware of inquiries and
14 questions from our customer base.

15 Q. Given the size of Schurz' cable
16 systems and the need to continuously evaluate
17 the cost and benefits of channel carriage, is
18 it safe to assume that Schurz cable systems
19 would not continue to carry channels if their
20 subscribers don't watch the programming
21 available on the channels?

22 A. Well, I think that's a loaded question
23 because I don't know how you view that as don't
24 watch and how we view that as don't watch.

25 In general, I think we know from

1 industry studies that any cable customer will
2 watch about 12 to 15 channels in a given day or
3 week. They have 12 or 15 channels that they
4 prefer.

5 And my 12 or 15 might be different
6 than your 12 or 15 or might be different than
7 my husband's 12 or 15. So we try to maintain a
8 complement and a wide complement of
9 programming.

10 Q. All of Schurz' cable systems carry
11 distant signals during 2010 through '13?

12 A. Yes, I believe that's correct.

13 Q. And the Hagerstown-based cable system
14 distantly retransmitted a broadcast station
15 from Baltimore called WJZ, I think you just
16 testified about orally?

17 A. Yes.

18 Q. You have testified in your written
19 report that WJZ produces Baltimore-based news
20 and sports programming, which are of important
21 value -- and I quote important value -- to your
22 subscribers.

23 How does Schurz measure the value of
24 programming to its cable subscribers?

25 A. Yeah, as I think I said, we have both

1 Nielsen data and then we have set-top box data
2 that we will look at.

3 Q. So WJZ also airs non-network
4 programming that includes syndicated series and
5 movies, correct?

6 A. I believe that's correct, yes.

7 Q. Okay. And, of course, Schurz' hope,
8 your cable system's hope, is that either cable
9 subscribers want to watch all of the
10 programming that is being offered, correct?

11 A. Well, we know they can't watch all the
12 programming that's being offered because it
13 will have to block out the duplicated network
14 or the protected syndicated programming.

15 So that leaves primarily
16 locally-produced content or non-protected
17 syndicated programming.

18 Q. Ms. Burdick, does the blackout
19 requirement apply to broadcast stations
20 nationwide?

21 A. If they are imported as a distant
22 signal. Is that what you are asking me?

23 Q. Yes.

24 A. The -- the rules of importing a
25 distant signal, as I understand it, apply

1 nationwide. So if WSBT in South Bend is
2 imported as a distant signal, the Chicago
3 stations have contracted exclusivity for
4 network and certain syndicated programming.

5 Conversely, in Baltimore, if
6 Hagerstown imports it as a distant signal, the
7 Washington, D.C. affiliate would have network
8 and some syndicated programming exclusivity.

9 Q. Thank you, Ms. Burdick.

10 MS. DOMINIQUE: I have no further
11 questions.

12 THE WITNESS: Thank you.

13 JUDGE BARNETT: Counsel, I think you
14 are going to have to tilt the mic down a little
15 bit.

16 MS. NYMAN: Can you hear me?

17 JUDGE BARNETT: Yes.

18 CROSS-EXAMINATION

19 BY MS. NYMAN:

20 Q. Good afternoon, Ms. Burdick.

21 A. Hi.

22 Q. My name is Jessica Nyman, and I
23 represent the Devotional Claimants in this
24 matter.

25 A. Um-hum.

1 Q. I am going to ask what seems like
2 basic questions to you but education for the
3 rest of us.

4 But if a cable system wants to
5 retransmit a broadcast station's signal, it
6 must first receive that signal somehow,
7 correct?

8 A. Correct.

9 Q. And given your experience in the
10 broadcast and cable industry, you're familiar
11 with the concept of a broadcast station's
12 signal contour, correct?

13 A. Yes.

14 Q. And would it be accurate to describe
15 that as the broadcast service area?

16 A. Yes. Sometimes the signal will extend
17 out of that, but generally not.

18 Q. And I think what you are referring to
19 there is that a broadcast station's signal
20 contour is not limited by DMA, correct?

21 A. That's correct.

22 Q. All right. And in order to receive a
23 broadcast station's signal over-the-air with an
24 antenna, i.e., not through the cable system,
25 you would have to be within the station's

1 signal contour; is that correct?

2 A. Correct.

3 Q. And if a cable system is within a
4 station's signal contour it, too, can receive
5 that signal over-the-air, correct?

6 A. Yes.

7 Q. But if a viewer or a system -- sorry,
8 if a cable system is outside of the signal
9 contour, it needs to find an alternate method
10 of receiving that signal; is that correct?

11 A. That's correct.

12 Q. And are you familiar with the
13 alternate delivery methods that are available
14 to the cable system to receive a signal?

15 A. At a very high level.

16 Q. We're going to keep it at a high
17 level.

18 A. Good.

19 Q. But you are familiar with, you know,
20 fiberoptic cable being an option?

21 A. Yes.

22 Q. Microwave relay services being an
23 option?

24 A. Yes.

25 Q. Okay. And would it be fair to say

1 that, as the distance increases between a
2 station and a cable system, you are going to
3 need more of that fiberoptic cable?

4 A. Correct.

5 Q. Or you are going to need more
6 microwave relays to hop the signal along to
7 where you can get it, right?

8 A. That is correct.

9 Q. Signal delivery is typically
10 negotiated between the broadcast station and
11 the cable system; is that correct?

12 A. That's correct.

13 Q. And that would apply both on a local
14 and a distant basis?

15 A. That's correct.

16 Q. And that would usually take place in a
17 retransmission consent agreement; is that
18 correct?

19 A. Yes.

20 Q. And have you ever reviewed or
21 negotiate a retransmission consent agreement?

22 A. I have.

23 Q. In these agreements is it typical for
24 the cost of signal delivery to fall on the
25 cable system?

1 A. No, it is generally the responsibility
2 of the broadcaster to deliver its signal, in my
3 experience, to the cable system.

4 Q. Would that be both for -- the station
5 to broadcast a good quality signal over-the-air
6 and also if the cable system can't receive the
7 station over-the-air, you are saying the cable
8 -- the broadcast station would pay the -- would
9 pay to get the signal to the cable system?

10 A. You're asking me about my experience.
11 And in my experience in Schurz, it has
12 generally been the responsibility of the
13 television station to get a quality signal to
14 the cable head end.

15 Q. And when you say the responsibility of
16 the station, do you mean that in the sense of
17 the station must cooperate with the cable
18 system to provide a quality signal at the cable
19 operator's request?

20 A. So all of those retransmission consent
21 negotiations are different. That may be how it
22 ends up. It may be that it ends up that it is
23 entirely a broadcaster obligation.

24 It may be that it is a -- I can't
25 think, I can't think of a circumstance of which

1 I'm aware where the sole responsibility lies on
2 the cable provider, when it is a negotiated --
3 negotiated item.

4 Q. Okay. And maybe responsibility is a
5 bit of a vague term.

6 As far as the cost of receiving that
7 signal goes, for example, if fiberoptic cable
8 needs to be used to get a signal or a cable
9 relay service needs to be used, would it be
10 typical for the cable operator to pay for the
11 fiberoptic cable or to pay for the cable relay
12 service?

13 A. I am hesitant to agree to anything
14 being typical in a retransmission consent
15 negotiation because, in my experience, they are
16 all different.

17 Q. Understood. With regard to the Schurz
18 stations that were broadcast -- that were
19 retransmitted on a distant basis in 2010 to
20 2013, did the Schurz stations pay to get their
21 signals to the distant cable systems?

22 A. You know what, I do not know the
23 answer to that.

24 Q. For the Hagerstown cable system, does
25 it pay to receive -- in 2010 to 2013, did it

1 pay to receive the signal from WJZ in
2 Baltimore?

3 A. And I don't know the specifics of that
4 either. I'm sorry.

5 Q. Okay. But we can agree, though, that
6 whoever pays the cost, as you get further away
7 that the cost is likely to increase, is that
8 correct, based on what you testified a second
9 ago, which was that you are going to need more
10 cable or more microwave relays the further away
11 you get?

12 A. Yeah, it depends on where the station
13 is. It depends on where the cable system is.

14 Q. And would it be fair to say that,
15 while there is no typical retransmission
16 consent agreement, if the signal delivery
17 provision gives the burden of paying for signal
18 delivery to the station, they may expect to
19 have higher retransmission consent fees from
20 the cable operator or some other ask in order
21 to exchange for the cost that they would --

22 A. Yeah, everything is negotiable.

23 Q. Okay. And cable systems use
24 subscriber groups; is that correct?

25 A. Yes.

1 Q. Why do cable systems use subscriber
2 groups?

3 A. Again, I know at a very high level.
4 They use subscriber groups to direct
5 programming to areas in which the -- to manage
6 the technical system and to direct programming
7 to the desirable consumer.

8 Q. And --

9 A. Desired consumer.

10 Q. And would it be the case some of the
11 time or most of the time that a signal that is
12 retransmitted on a distant basis is distant to
13 some subscribers but local to other subscribers
14 within the cable system?

15 A. Yes.

16 Q. And that was the case, for example,
17 with Antietam cable in Hagerstown, the
18 Baltimore signal was local to some of its
19 subscribers but distant to others, right?

20 A. A very small part, yes.

21 MS. NYMAN: No further questions.

22 THE WITNESS: Thank you.

23 CROSS-EXAMINATION

24 BY MR. HUNZIKER:

25 Q. Good afternoon, Ms. Burdick. My name

1 is Rob Hunziker. I represent the Public
2 Television Claimants.

3 A. Hi.

4 Q. So I want to talk a little bit more
5 about Hagerstown that you focused in on
6 earlier.

7 The Schurz station in Hagerstown is
8 Antietam cable, right?

9 A. Schurz system, yes.

10 Q. Schurz system. Excuse me. And you
11 talked a little bit about some of the distant
12 stations they carry.

13 What -- in general, what Public
14 Television stations did that system carry?

15 A. I don't have the full program line-up
16 in front of me, but from my memory, which is a
17 dangerous thing, they carry Maryland Public
18 Television and, in addition, and some of its
19 sub-channels, and they carry WETA out of
20 Washington, D.C. and some of its sub-channels.

21 Q. And wouldn't some of that have been
22 carried on a distant basis?

23 A. I -- I think that's true. I think
24 part of WETA, like WJZ in part of the system
25 would be a must carry, and then it is a distant

1 signal in other parts of the system.

2 Q. And which station did you say again?

3 A. WETA.

4 Q. Okay.

5 A. I believe. I could be wrong about
6 that but that's my memory.

7 Q. So would you be surprised to learn
8 then that the station would have paid cable
9 royalty fees that year or that set of years?

10 A. You mean the Hagerstown system?

11 Q. Right.

12 A. I am aware that they paid cable
13 royalties.

14 Q. For WETA?

15 A. Yes. I am aware of that.

16 Q. Okay. And you mentioned that there
17 were multiple Public Television stations that
18 the system carried. And I believe you
19 mentioned that one of the reasons for that is
20 because Hagerstown is a commuter market, right?

21 A. Yes.

22 Q. Let me step back. You did describe
23 Hagerstown as a commuter market for Washington,
24 D.C.?

25 A. For both Washington and Baltimore,

1 yes.

2 Q. Okay. And as a commuter market, some
3 of the people that live in the Hagerstown area
4 or surrounding areas that are commutable to
5 Washington, D.C., those potential audience
6 members would be interested in
7 Washington-focused programming, right?

8 A. Yes.

9 Q. So Washington news or public affairs
10 and that kind of programming?

11 A. Yes. Hagerstown is in the Washington
12 DMA, yes.

13 Q. And Hagerstown is also just right on
14 the border of Pennsylvania, right?

15 A. Correct.

16 Q. And so it would still be commutable
17 from, say, just across the border in
18 Pennsylvania?

19 A. Our experience is that commuters are
20 going generally to D.C. or Baltimore for
21 employment or for airline travel, primarily.
22 Hagerstown has almost no airline service.

23 Q. Okay. But the greater Hagerstown
24 area, there are a lot of people that commute to
25 D.C. and would be interested in D.C.

1 programming?

2 A. Correct.

3 Q. Okay. So those folks that commute and
4 are interested in D.C. programming might be
5 interested in a series that spotlights goings
6 on or special places in the Washington, D.C.
7 area?

8 A. They could be.

9 Q. All right.

10 MR. HUNZIKER: I have no further
11 questions. Thank you.

12 THE WITNESS: Okay.

13 JUDGE BARNETT: Thank you, Mr.
14 Hunziker. Other questions? Redirect, Mr.
15 Stewart?

16 MR. STEWART: Yes.

17 JUDGE BARNETT: You see it can be
18 done, gentlemen and ladies. It can be done.

19 MR. STEWART: Well, I'm -- now that
20 they have all gone less than their estimates, I
21 can finish the rest of my direct. I'm not
22 going to do that.

23 (Laughter.)

24 REDIRECT EXAMINATION

25 BY MR. STEWART:

1 Q. I just have a few questions,
2 Ms. Burdick.

3 Ms. Dominique asked you about the use
4 of viewing data by the cable system, by
5 Antietam cable. Now -- and you talked about
6 set-top box data.

7 A. Um-hum.

8 Q. Did the cable system in deciding which
9 channels to carry or drop use viewing data that
10 reflected how much viewing was done to
11 different programs on the distant signal or on
12 any channel?

13 A. So on the cable side, unlike
14 broadcast, we are less interested in specific
15 programs than we are cumulative viewing to a
16 channel because that's what we contract for, a
17 channel, not a specific program like we would
18 on the broadcast side.

19 Q. And what do you mean by "cumulative
20 viewing"?

21 A. So total viewing to the total number
22 of subscribers that would view that channel.

23 Q. Okay. So just to be clear, if a cable
24 household watched a particular channel, any
25 programs on the channel for ten hours or one

1 hour, how would that affect how they were
2 counted in this cumulative rating?

3 A. Oh, you know, John, I don't really
4 know that I know the specific answer of how
5 Antietam uses that.

6 My conversations with Antietam were
7 over a period of time, and let's say a year,
8 they would look at their top 50 or top 60
9 viewed channels to make decisions in viewing,
10 not a specific program in that channel.

11 Q. And was the top 50 in viewing based on
12 the number of different households that viewed
13 the particular channel?

14 A. Yes. Yes.

15 Q. And not the relative amounts of
16 viewing --

17 A. Correct. Correct. I understand what
18 you're saying -- what you're asking now. I'm
19 sorry.

20 Q. And you talked about the unique
21 programming, about when the cable system is
22 deciding what distant signals to add or drop,
23 looking for unique programming that was of
24 interest to the community. Is that correct?

25 A. Yes.

1 Q. Mr. Hunziker asked you about WETA.
2 First, he asked whether subscribers in
3 Hagerstown would be interested in D.C.
4 programming. Do you remember that?

5 A. Yes.

6 Q. Do they get any D.C. programming on
7 must-carry signals?

8 A. Yes, they get all of the Washington
9 commercial television stations.

10 Q. Okay. And now turning to WETA,
11 Hagerstown already had a local PTV affiliate,
12 is that right, PBS affiliate?

13 A. Yes. And for clarification, it is not
14 in Hagerstown proper. It is a Maryland public
15 TV.

16 Q. Okay. So to the extent that this
17 other PBS -- PTV signal that was already
18 carried by the system carried PBS network
19 programming, would PBS network programming on
20 WETA from Washington be the kind of unique
21 programming of interest to the community that
22 you were referring to?

23 A. Yes, I would say that Antietam's
24 primary interest was the unduplicated PBS
25 programming that WETA would uniquely provide.

1 And I think we all know that they are renowned
2 for the kind of programming they produce.

3 Q. Could we, Bob, could we have
4 Exhibit A-2?

5 And so this is the map of the Roanoke
6 market and the places where WDBJ was carried as
7 a distant signal; is that correct?

8 A. Yes.

9 Q. Now, and are there mountains in this
10 -- they're not on this map but are you aware of
11 where the mountains run here?

12 A. I am. The Judge can probably describe
13 it better. The Roanoke-Lynchburg market is
14 divided by mountains. I don't know where they
15 extend into West Virginia.

16 Q. So WDBJ is -- the cable systems off to
17 the left of this map are on the other side of
18 mountains from Roanoke, are they not?

19 A. Right.

20 Q. Okay. And finally, would WDBJ have
21 viewing information in that dark blue -- from
22 that dark blue DMA available to it?

23 A. No.

24 Q. Would cable systems in that dark blue
25 DMA -- well, first of all, this, the cable

1 system that shows with the pink dots, which is
2 TNK, is that another sort of sprawling system?

3 A. I believe it is. I'm not specifically
4 aware of that, where that system leads you.

5 Q. TN means Tennessee; do you know that?

6 A. Oh, yeah, okay, I see that down at the
7 bottom. I had forgotten that, yeah.

8 Q. Okay. So, but in any event --

9 A. Tennessee, Georgia, Virginia, yeah.

10 Q. This broad cable system carries WDBJ
11 as a distant signal only in these markets which
12 are almost all --

13 A. Right.

14 Q. -- in the State of Virginia itself; is
15 that right?

16 A. Yes.

17 Q. Okay.

18 MR. STEWART: And that's all the
19 questions I have. Thank you.

20 JUDGE BARNETT: There are quite a few
21 mountains. And just across the border is West
22 Virginia. We used to joke that if you
23 flattened out West Virginia, it would be bigger
24 than Texas. So lots of mountains.

25 Any further questions for this

1 witness? From the bench? No.

2 Thank you, Ms. Burdick. You may be
3 excused. Thank you for coming in to see us.

4 THE WITNESS: Yes.

5 JUDGE BARNETT: Do we have any other
6 witnesses for today?

7 MR. GARRETT: When we heard the
8 estimates of cross-examination, we sent them
9 all home, Your Honor. But we will have three
10 available tomorrow, if we get to all three.

11 JUDGE BARNETT: I have now seen
12 efficiency at work, and I expect it tomorrow,
13 yes. And who will be up tomorrow?

14 MR. GARRETT: Tomorrow we have Mr.
15 Singer will go first, and then depending how
16 long he goes, it will be Mr. Harvey or Mr.
17 Hartman will follow.

18 JUDGE BARNETT: Okay.

19 MR. GARRETT: Those could be switched,
20 but all three will be available tomorrow.

21 And, Your Honor, I should note that we
22 got an e-mail while we were here today about
23 our witness for Monday who apparently has now
24 contracted Influenza B. I don't know whether
25 Influenza B is the good one or the bad one or

1 what.

2 JUDGE BARNETT: I don't think there is
3 a good one.

4 MR. GARRETT: But we're still planning
5 and hoping that he will testify on Monday and,
6 if not, we will have to try to shuffle the
7 schedule.

8 JUDGE BARNETT: Perhaps tomorrow you
9 will have more information and someone else in
10 the room can slide in a more local witness in
11 case your witness needs more recuperation time.

12 MR. GARRETT: Thank you, Your Honor.

13 JUDGE BARNETT: Thank you, all. We
14 will be then at recess until 9:00 o'clock in
15 the morning.

16 (Whereupon, 3:56 p.m., the hearing
17 recessed, to reconvene at 9:00 a.m. on
18 Thursday, February 22, 2018.)

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1 C O N T E N T S

2 WITNESS: DIRECT CROSS REDIRECT VOIR DIRE

3 NANCY MATHIOWETZ

4 By Mr. Cho 749

5 By Mr. Olaniran 810

6 By Mr. Cosentino 911

7 By Mr. Laane 921

8 MARCI BURDICK

9 By Mr. Stewart 927

10 By Ms. Dominique 942

11 By Ms. Nyman 956

12 By Mr. Hunziker 963

13

14 AFTERNOON SESSION: 848

15

16 CONFIDENTIAL SESSIONS: NONE

17

18 E X H I B I T S

19 EXHIBIT NO: MARKED/RECEIVED WITHDRAWN

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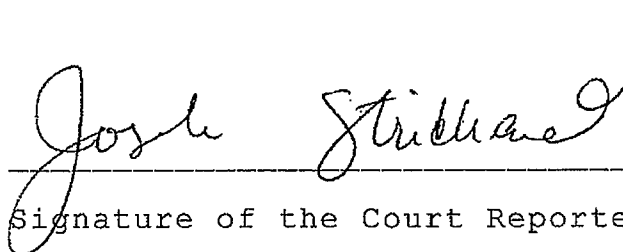
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CERTIFICATE

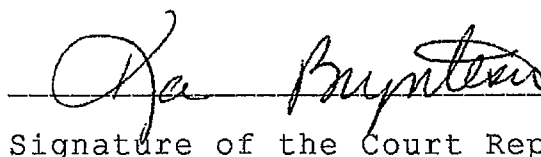
I certify that the foregoing is a true and accurate transcript, to the best of my skill and ability, from my stenographic notes of this proceeding.

2-21-18

Date


Signature of the Court Reporter2-21-18

Date


Signature of the Court Reporter

<p>0</p> <p>04 [1] 816:9 05 [1] 816:9</p> <hr/> <p>1</p> <p>1 [14] 801:24 804:2,5 805:2,24 807:11 808:24 809:1 846:21 852:18 872:22 884:16,17 939:6 1-1/2 [3] 800:11 801:2,15 1:04 [2] 847:19 848:2 10 [13] 753:15 755:5 759:6 798:22 799:12,15 800:24 801:10,17 802:6 803:6 810:9 854:1 10:31 [1] 797:13 10:50 [1] 797:14 100 [41] 760:19 762:7,8,11,13,14 766:10 771:16 772:11,12,19 773:5,8,14,20 775:15,24 776:13,17,23 777:13,24 779:12 785:18 807:4,23 808:1,7,10,14 809:6 813:14 861:20 862:2 916:20 917:4,8,10,16 918:20 919:11 1001 [2] 736:23 895:20 1006 [1] 784:25 1007 [1] 750:18 101 [1] 735:15 108 [2] 902:22 903:9 11 [5] 783:23 806:8 830:10 837:4,8 11:00 [1] 934:24 11:55 [1] 847:18 111 [2] 873:3,9 874:11 875:12 888:8,23 12 [7] 860:19,21 954:2,3,5,6,7 12-7-2011 [1] 833:10 12:55 [1] 847:17 1200 [1] 739:7 1233 [1] 738:19 12th [1] 745:1 13 [12] 811:15 819:1,6 885:1,4 928:8 934:18 939:1 940:16 944:8 948:20 954:11 15 [11] 759:1 854:1 911:6 919:16 926:15,15 954:2,3,5,6,7 15-minute [1] 797:12 150 [1] 938:19 150-mile [2] 934:14 937:21 16 [2] 789:25 833:16 16-month [1] 835:15 1629 [1] 738:5 17 [1] 744:24 18 [1] 791:23 1818 [1] 737:9 19 [1] 784:1 1980s [1] 788:5 1983 [2] 829:22 830:5 1985 [2] 829:22 830:3 1989 [1] 885:18 1991 [2] 885:16,21 1996 [1] 885:25</p> <hr/> <p>2</p> <p>2 [17] 805:10,15 819:10,10 854:5</p>	<p>867:8 868:3 882:24 883:7,9,14 884:12 889:3 890:18 891:1 897:9,14 2-3 [1] 832:12 2.2 [3] 770:16 805:10 923:8 2/21/18 [2] 976:9,12 2:40 [1] 926:19 20 [19] 753:15 755:5 796:4,10,12 802:5 805:23 806:22 807:17,22 808:4,4,5,13,15,16 854:2 914:5,19 20-plus [1] 885:24 200 [2] 738:11 919:12 2000 [2] 926:10 943:19 20001 [2] 736:10 737:20 20004 [1] 736:24 20006 [1] 738:6 2002 [1] 943:19 2003 [3] 930:7,23 933:15 20036 [3] 737:10 738:20 739:8 20037 [1] 736:16 2004 [2] 815:20 831:12 2005 [2] 815:20 831:12 2009 [3] 886:3 912:1 913:14 2010 [43] 811:15 812:18 818:22 819:1,5 830:24 831:5,22 833:5,15,21,24 834:2 835:15 836:4,25 840:2 851:23 870:14 872:22 873:7,9 874:10,14 887:24 888:6 896:7 897:10 899:8 901:1,16 905:17 928:8 934:18 939:1 940:16 942:17,24 944:8 948:20 954:11 961:19,25 2011 [4] 831:6 835:21,24 836:25 2012 [16] 799:3,20 831:23 833:6,10,12,16,22,23 835:15,21,24 836:7 930:7,12 934:5 2013 [13] 798:25 812:18 818:22 830:24 835:21,25 836:2 896:6 905:17 942:17,25 961:20,25 2016 [3] 740:20 744:20 818:21 2017 [4] 740:22,23 744:19 926:10 2018 [4] 735:17 741:1 742:2 974:18 202-355-6432 [1] 738:7 202-355-7917 [1] 737:11 202-408-7600 [1] 738:21 202-624-2685 [1] 736:25 202-626-6688 [1] 736:17 202-662-4956 [1] 737:21 202-663-8183 [1] 739:9 202-942-5000 [1] 736:11 20th [1] 738:19 21 [4] 735:17 804:13 809:13 832:15 22 [3] 784:24 885:24 974:18 22nd [3] 741:1 742:1,19 23 [2] 759:1 848:23 24/7 [1] 950:5 2500 [1] 736:15 27 [2] 885:17,21 28 [1] 921:21 2a [4] 854:13,14 855:3,6</p>	<p>2b [24] 852:21 853:6 854:6,15,17 855:4,18 857:12,15,21 859:18 862:21 865:16 869:24 871:11,19 872:1 874:13 875:7,10 888:4 889:12 890:10 891:22 2nd [1] 744:19</p> <hr/> <p>3</p> <p>3 [42] 802:7,18 803:7 806:19 853:12 854:5,6,17 855:18 857:21 859:18 862:21 865:16 867:8 868:3 871:20 873:11,12 874:4,13,25 875:8,15,18 876:9 880:7,7 882:24 883:7,10,14 884:13 888:10,21 889:3,12 890:10,18 891:1,23 932:17 934:3 3/6/12 [1] 852:6 3:03 [1] 926:20 3:56 [1] 974:16 30 [15] 753:15 755:5 798:22 799:15 800:25 801:11,14,18 802:6 806:24 809:10 810:9 885:4 914:6,19 300 [1] 738:5 3011 [2] 749:5,13,14 782:23 820:16 863:11 869:3 975:20 33 [4] 798:7 799:2,16 800:19 33.3 [1] 799:21 34 [3] 885:1,4,7 36 [2] 776:3 804:15 383 [1] 784:5 388 [1] 869:4 389 [2] 863:11 865:9 390 [1] 864:5 391 [1] 924:20 398 [1] 784:4 3983 [2] 784:3,3 3rd [2] 740:23 743:11</p> <hr/> <p>4</p> <p>4 [28] 819:11 839:24 854:5,6,17 855:19 857:21,24 861:18 867:8 868:3 882:22,25 883:8,12 886:24 887:2,19 888:15 889:3,6,16 890:5,19 891:3 903:3 914:2,18 4:30 [1] 927:19 40 [2] 753:16 796:5 805:24 806:25 807:20,21 808:4 927:15 42 [1] 928:16 43 [2] 751:7 758:23 45 [1] 759:4 4a [4] 853:17 859:18 884:24,25</p> <hr/> <p>5</p> <p>5 [17] 751:16,17 800:1,21 801:8,12,18 803:6 804:23 805:4,12,21 807:2 808:18 837:3,8,9 50 [5] 785:11 813:14 866:12 969:8,11 50s [1] 787:10 51 [1] 750:18 52 [1] 775:21 530 [1] 738:11 55 [4] 785:11 804:15 806:24 809:</p>	<p>10</p> <hr/> <p>6</p> <p>6 [1] 872:23 60 [1] 969:8 601 [1] 736:9 6012 [1] 775:8 6020 [3] 851:5 869:24 887:1 62 [1] 804:7 626-795-6001 [1] 738:13 64 [1] 797:18 68 [1] 794:1</p> <hr/> <p>7</p> <p>7 [3] 903:15 904:2 932:17 703 [1] 738:19 749 [2] 975:4,20</p> <hr/> <p>8</p> <p>8 [1] 923:11 8.5 [1] 903:8 8.8 [1] 799:21 80 [1] 790:17 810 [1] 975:5 848 [1] 975:14 850 [1] 737:19 8th [1] 737:9</p> <hr/> <p>9</p> <p>9 [4] 799:2,16 800:19 923:11 9:00 [2] 974:14,17 9:18 [2] 735:19 740:2 90 [3] 917:25 918:15 934:22 911 [1] 975:6 91101 [1] 738:12 921 [1] 975:7 927 [1] 975:9 93 [1] 788:7 942 [1] 975:10 95 [1] 922:15 956 [1] 975:11 963 [1] 975:12 9th [1] 740:21</p> <hr/> <p>A</p> <p>A-1 [3] 933:15 935:10 937:20 A-2 [2] 937:17 971:4 A-3 [1] 940:2 a.m [7] 735:19 740:2 797:13,14 806:8 847:19 974:17 ABC [2] 856:21 943:4 ability [4] 830:1,3 945:21 976:5 able [12] 748:4 774:24 838:25 842:1 861:1 862:11 916:22 921:3 924:24 932:22 950:4,7 Absolutely [5] 783:4,10 806:17 813:4 891:16 abstract [1] 810:10 abyss [1] 789:22 Academy [1] 904:4 accept [2] 745:5 947:22 accepted [3] 743:14 822:4 926:2 accepting [1] 746:6 acclimate [1] 883:10</p>
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<p>accommodate [1] 927:17 accommodating [1] 927:7 accordance [1] 822:4 accorded [1] 895:11 according [3] 803:25 829:20 887:7 account [9] 768:19 769:21,24 770:15 771:10 779:8 780:24 834:10 923:15 accounted [5] 758:25,25 804:13 806:22,24 accounting [1] 881:11 accurate [6] 771:2 824:7 828:24 876:21 957:14 976:4 accurately [5] 758:16 822:3,20 823:3 825:1 achieved [2] 785:12 786:13 acknowledge [1] 914:1 acknowledged [3] 741:9 742:6 744:4 acquire [8] 840:3 873:14 874:25 875:2,20 944:11,21 945:12 acquired [2] 944:14 946:21 acquiring [4] 943:14,20,24 944:4 acquisition [2] 846:9,17 across [25] 752:25 754:8 763:18 764:15,16 768:21 776:24 777:5,8 785:11,12 786:14,24 787:11 791:8,20 839:10 845:7 850:13 856:8 872:6 884:4,10 966:17 972:21 active [4] 929:2,6,11,14 activities [1] 912:25 actual [6] 832:25 833:1,12 847:8 860:10 892:24 actually [42] 741:4 754:11 760:3 764:19 767:4 769:10 770:19 771:22 773:13 774:16,25 779:16 796:14,16 812:19 814:15 815:19 824:3 829:21 830:4 831:1 832:18 840:16 848:7 849:1 851:18 860:25 862:9,16 866:15,21 875:20 892:9,22 896:7 901:24 906:20 907:15,20,22 908:22 939:18 ad [5] 947:9,15,17,20,23 add [10] 771:20 775:23 776:16 777:13,24 859:19 862:22 868:2,20 969:22 added [2] 773:20 775:14 adding [2] 773:14 889:18 addition [8] 786:13 930:19 932:1 934:25 939:2,8 953:8 964:18 additional [9] 740:22 742:17,20,21 745:2 746:6 813:3 885:11 932:11 additionally [1] 936:4 address [5] 746:7 756:10 781:21 784:16 837:10 addressed [1] 745:24 addresses [2] 756:14 785:1 addressing [3] 886:9,12 892:14 adds [2] 776:13 881:13 adjacent [2] 934:13 938:13</p>	<p>adjusting [1] 921:22 adjustment [6] 778:6,13 780:18 922:10,18 924:9 adjustments [2] 778:16 780:4 ADKINS [1] 736:7 administered [1] 818:17 administration [4] 817:13 892:19 912:14 914:14 admissible [1] 745:15 admission [2] 749:4,8 admitted [4] 749:13 840:24 852:13 930:22 adopted [1] 816:9 advance [2] 892:23 899:14 advanced [1] 741:24 advantages [2] 773:11,15 advertisers [1] 945:21 advertising [3] 945:22 947:3,5 advised [1] 806:13 Advisor [1] 928:1 affairs [2] 890:6 966:9 affect [3] 919:18,25 969:1 affected [2] 795:16 796:25 affiliate [5] 929:15 934:7 956:7 970:11,12 affiliated [1] 943:3 afford [1] 743:4 afforded [1] 893:3 AFTERNOON [14] 848:1 911:22,24 921:15 923:3 926:21 931:16 934:22 942:4,8,9 956:20 963:25 975:14 aggregate [1] 857:6 ago [10] 769:7 825:24 871:8 885:17,21,24,25 886:4,5 962:9 agree [23] 752:10 778:5,10 790:4,6 805:14,22 809:25 822:11,24,25 835:14 837:24 842:15 854:7,9,18,25 892:10 948:12 951:7 961:13 962:5 agreed [3] 830:15 841:1 927:11 agreed-upon [1] 906:4 agreement [4] 851:14 959:17,21 962:16 agreements [1] 959:23 ahead [2] 835:10 921:6 air [7] 905:4 906:8 907:17 908:22,25 941:8 950:4 aired [4] 894:18 905:16 907:22 946:22 airing [1] 908:9 airline [2] 966:21,22 airs [2] 947:10 955:3 akin [2] 901:6,7 ALAN [1] 736:3 ALBINA [1] 737:6 alert [1] 927:13 ALESHA [2] 737:5 942:12 algorithm [1] 793:13 alike [1] 769:5 alleviate [1] 834:19 allocate [3] 776:9 839:10 884:9</p>	<p>allocated [1] 826:18 allocation [6] 759:5 839:20 862:2 887:7 888:18 906:21 allocations [4] 759:2,7 815:22 884:21 allow [3] 862:13 871:20 893:7 allowed [1] 835:7 allowing [1] 748:10 alluding [1] 925:2 almost [8] 755:5 787:15 808:1 809:6 816:4 923:17 966:22 972:12 alone [1] 758:25 already [18] 742:8 752:9 780:7,9,21 814:3 829:4 840:24 846:4 852:13 876:16 883:12 891:19 898:9 906:24 910:20 970:11,17 alternate [3] 855:12 958:9,13 alternative [2] 755:21 756:21 although [2] 767:14 914:17 ambiguities [1] 883:21 ambiguity [1] 881:13 ambiguous [7] 869:15,20 877:2,7 879:22 881:11 917:6 amended [3] 740:21,22 745:9 America [1] 896:6 among [4] 762:21 793:23 795:13 796:21 amount [12] 751:21 762:19 776:8 800:10 810:12 839:10 840:2,5,6 906:8 939:17 941:7 amounts [1] 969:15 analogy [1] 817:19 analyses [1] 744:9 analysis [25] 742:17,20 747:21 748:12 750:25 751:6,12 752:6 753:2 757:2 758:6,11 761:9 766:15,17 786:5 790:16 791:3,4 792:15 794:3 795:2,23 797:5 815:6 analytically [4] 868:13,14,17 883:19 analyze [1] 743:1 analyzed [1] 822:4 anchor [3] 903:17 928:20 933:6 and/or [1] 868:3 ANN [1] 736:21 another [14] 753:11 771:7 781:3 801:22 823:10 853:12,13 855:7 924:19 927:18 933:24 936:23 940:3 972:2 answer [25] 754:5 756:11 817:15 825:25 835:7 842:1 843:11 855:18 859:18 862:6,8,11 864:2 866:17 867:4,18,22,24 877:16,23 894:6 924:24 925:3 961:23 969:4 answered [6] 773:7 835:8 838:5 861:4 865:24 883:14 answering [17] 768:18 769:10,14 770:16 773:5 823:23 834:8 843:2,9,12,18,22 846:14 855:25 877:20 921:5 925:8 answers [4] 769:16 823:12 920:23 952:17</p>	<p>antenna [1] 957:24 anticipate [1] 848:18 anticipated [1] 946:1 Antietam [9] 940:10,14,15 953:5 963:17 964:8 968:5 969:5,6 Antietam's [1] 970:23 anybody [4] 783:7 796:18 936:7 939:21 apart [3] 914:10,11 915:1 apparently [1] 973:23 appear [2] 819:19 919:15 APPEARANCES [3] 737:1 738:1 739:1 appearing [1] 933:25 appears [2] 774:22 918:7 Appendix [8] 776:3 830:10 895:17,25 896:5,9,14,17 apples [3] 803:18,18 859:4 apples-to-apples [1] 922:1 applicable [1] 892:17 applied [1] 828:22 apply [4] 809:24 955:19,25 959:13 appreciate [1] 761:10 approach [15] 752:14 758:17 759:17 765:20 775:2 778:20 779:1 781:18 782:19 820:3 851:1 896:21 910:9 918:25 925:9 approaches [3] 744:8 758:4 765:11 appropriate [7] 743:5 759:13 767:11 778:14 781:2 925:23 926:2 approximate [1] 785:11 approximately [4] 800:10 805:1 808:24 809:1 April [4] 740:23 743:11 744:20 833:10 area [11] 824:17 840:23 906:14 931:20 934:9,9 936:6 957:15 966:3,24 967:7 areas [3] 934:13 963:5 966:4 aren't [4] 748:10 762:18 809:4 874:19 arguing [1] 799:18 Arizona [1] 948:23 arm [4] 817:22,22,23,25 Arnold [2] 736:8 738:16 around [15] 800:1,24 805:6,11 849:14 889:7 915:19 919:2,19,22 932:5 934:12,14 938:12 939:17 articles [1] 850:3 asks [10] 765:12 776:22 783:16 784:12 839:20 860:14 870:10,13 872:20 897:14 aspect [3] 771:8 780:17 781:4 assess [3] 794:17 816:5 868:14 assessing [2] 815:11 924:6 assessment [3] 761:4 819:2 850:12 assign [1] 884:17 assigned [1] 759:7 assignment [1] 750:1 associate [2] 824:25 846:8</p>
--	--	---	--

<p>associated [2] 825:7,22 Associates [1] 831:9 Association [3] 929:7,12,17 associations [1] 929:15 assume [7] 768:24 799:22 833:20 840:1 896:5 903:13 953:18 assumes [2] 756:1 865:14 assuming [3] 800:14 833:19 890:10 assumption [3] 818:6 833:11 918:10 assumptions [1] 924:2 attached [2] 812:10 899:8 attachment [1] 933:14 attempt [2] 816:1 917:10 attempted [1] 762:8 attention [1] 849:25 attractiveness [1] 945:21 attributable [2] 771:11 948:1 audience [3] 946:2,16 966:5 augmentation [1] 781:1 August [2] 836:7 885:16 Augusta [1] 943:20 authority [2] 781:14 782:6 autonomous [1] 930:10 available [8] 742:23 941:14 948:3 953:21 958:13 971:22 973:10,20 Avenue [4] 735:15 736:9,23 738:11 average [9] 759:3 764:15 768:10 770:10 853:21 909:11 923:7,10,21 awaiting [1] 831:10 Award [1] 904:4 awarded [1] 760:13 aware [30] 740:11 741:11 754:25 755:9,16,16 761:11 771:1 780:16 813:1 827:16 829:16 831:5,8,17, 21 832:3 833:5,8 835:23 901:12 913:12 949:11 950:24 953:13 961: 1 965:12,15 971:10 972:4 away [4] 757:17,23 962:6,10 Axelrod [1] 885:13 Axelrod's [1] 885:23 axiom [1] 825:11</p>	<p>Baltimore-based [1] 954:19 band [1] 936:11 BARNETT [84] 735:9 740:3 743:9, 11 744:1,3,12,23 745:4,8,16,21 746:3,22 747:3,6,10,20 748:8,16, 20 749:9,12 750:11 758:18 770:1 775:6,9 782:21,24 783:4,6 797:11, 15 806:12 810:22 835:8 847:12, 15 848:3,11,14,19,25 851:3,7,12, 20 852:12,15 896:23,25 897:4 910:22 911:2,7,16 920:11,17,19 921:6,10 926:13,21 927:14,20 931:5 938:1,5,10 942:2 948:7 956: 13,17 967:13,17 972:20 973:5,11, 18 974:2,8,13 base [3] 935:16 941:5 953:14 baseball [8] 900:5,5 901:24 902:3, 6 904:8,9,13 basis [18] 772:8 743:17 745:10 746:20 747:2 758:3 771:14 802:7, 17 858:5,10 868:13 885:14 918:9 929:19 944:1 962:8 969:11 basic [1] 957:2 basically [3] 875:1 901:14 930:10 basing [2] 907:17,19 basis [18] 749:24 760:25 761:12 768:19 778:3 812:7 860:6 869:16 931:13,22 932:7 939:12 941:9 950:5 959:14 961:19 963:12 964: 22 basketball [4] 901:25 904:16,20 932:14 bear [2] 787:25 837:5 became [1] 928:21 become [1] 828:18 becomes [1] 825:14 begin [1] 749:3 beginning [5] 776:15 831:3 870:2 874:24 932:16 begins [3] 880:7 916:9 919:12 behalf [11] 736:2,18 737:2,13 738: 2,15 739:2 821:2 826:25 828:2 930:15 behavior [3] 841:24,25 842:10 behavioral [1] 788:23 behooves [1] 867:23 believe [35] 744:17 749:7 750:17 751:6,14 758:12 760:25 769:7,23 770:19 771:5 772:22 775:20 778: 23,24 783:25 784:2 787:8 792:8 815:15 832:12 838:3 842:25 843: 7 862:19 888:10 925:15 945:6 948:19 951:21 954:12 955:6 965: 5,18 972:3 believed [4] 746:24 764:7 821:16 945:17 bell [1] 792:2 belong [1] 839:6 below [1] 790:17 Bench [4] 743:7 783:9 926:14 973: 1 Bend [5] 928:2 934:7,10 935:2 956:</p>	<p>1 benefit [1] 792:3 benefits [3] 883:9 952:13 953:17 BENJAMIN [1] 738:17 Bennett [2] 933:21,24 besides [1] 777:10 best [2] 750:12 976:4 bet [1] 952:15 better [1] 971:13 between [34] 755:10 759:1 764:25 769:8,15 777:22 783:1 785:5,23 787:9,20 788:14 789:20 790:25 792:12 793:19 794:15 796:20 798: 21 800:24 801:1,10 835:15 847:3 890:18,18 893:17,25 894:9 905: 16 911:13 942:17 959:1,10 beyond [1] 860:4 bias [38] 771:10 783:17 784:13 785:1,4,15,22 786:9,12,19,22 787: 1,4,13,16,18 790:16 792:18 794: 17 795:17 796:25 797:6 807:9,10, 10 808:25 809:15 822:16,16 823: 7,7,8,14,17,21,21 829:18 833:25 biased [4] 750:19 787:5 824:8,8 big [1] 753:16 bigger [2] 790:7 972:23 biggest [1] 807:8 binder [2] 850:22 896:8 binders [1] 774:22 bit [10] 797:8 798:19 886:25 889: 18 892:5 933:10 956:15 961:5 964:4,11 black [1] 950:12 Blackburn's [1] 780:18 blackout [1] 955:18 block [1] 955:13 blood [4] 817:20,21 818:1,2 blue [3] 971:21,22,24 board [5] 929:8,10,13,16,18 Bob [1] 971:3 body [1] 826:9 Boggs [1] 736:14 Book [1] 885:10 Book's [1] 885:15 books [1] 918:8 bootstrapping [2] 918:12,25 border [3] 966:14,17 972:21 bore [1] 909:14 Bortz [128] 755:10,14,24 762:12 763:11 765:1,18 767:14 768:13, 15 769:14,19 770:14,23 771:3,9, 21 778:1,4,7,7,12,16 779:9 780:18, 25 781:1,4,10 785:8 786:6,19 787: 5,8 788:19 790:20 792:12,17 793: 17 795:14,16,19 796:22,24 803:21, 24 804:1 805:5,9 811:6,9,15,21,23, 24 812:2 813:24 814:11,18 816:7 819:1 820:11 826:22,24 828:6,14 829:17,21,25 830:23 831:1,9 832: 6,15 834:5,14,25 835:4,9,14 836: 20 837:10,24 838:4,12 839:8 841: 1 842:14,15,22 843:10,15 844:2</p>	<p>845:15 846:7 850:12 853:2 862: 22 865:17 866:1 868:5 872:3 886: 9,16,22 887:7 909:6,22,23,24 912: 2 914:21,25 919:9,10,11,22 920:1 922:5,25 923:7,20 924:1,4,7,10 925:14,23 Bortz's [2] 892:10 893:12 both [22] 743:22 746:15,18 750:23 763:10,20 765:3 785:4 823:17 824:3,23 826:24 882:6 908:19 909:3 931:17,21 942:25 954:25 959:13 960:4 965:25 bottom [6] 742:1 767:15 832:15 837:8 907:11 972:7 bowl [1] 939:19 box [3] 953:8 955:1 968:6 branding [1] 933:8 break [7] 797:10 847:11 860:12,14 911:8,14 920:15 bridge [1] 927:18 briefly [2] 776:11 852:10 bring [2] 753:17 757:15 bringing [1] 906:12 broad [2] 902:4 972:10 broadcast [43] 772:3 776:6 856: 24 873:15 887:23 929:3 942:21, 25 943:3,8,12,15 944:3,7,10,20,22 945:8 946:1,6,15 947:10,14,22 949:25 950:3,18,21 951:5 954:14 955:19 957:5,10,11,15,19,23 959: 10 960:5,8 961:18 968:14,18 broadcaster [2] 960:2,23 Broadcasters [3] 929:8 948:13, 14 broadcasting [2] 928:14 931:4 broadcasts [1] 931:12 broadly [1] 809:23 broadly [1] 746:14 brought [2] 828:19 845:19 BRYAN [1] 736:7 Brynteson [1] 976:12 BUDRON [1] 737:7 Building [1] 735:14 bullet [4] 751:1 752:2 761:17,18 Bulls [4] 899:25 900:6 901:25 904: 16 bunch [1] 913:7 bundles [2] 878:6 879:6 burden [6] 751:3 752:3 765:2 883: 17 911:12 962:17 BURDICK [21] 926:24 927:24 930: 14 931:3,6,9 933:15 935:5 942:8, 16 943:6 948:7,12 951:7 955:18 956:9,20 963:25 968:2 973:2 975: 8 Burling [1] 737:17 business [2] 740:13 948:16 but-for [1] 894:11 buyer [14] 838:12,16 839:16,18 840:9 841:22,24 842:2,5,23 844: 24 845:1 847:7 947:23 buyer's [1] 843:17</p>
--	--	---	---

buyers [1] 947:20 buying [2] 878:5 947:25 buzz [1] 781:15 <hr/> C C-1 [5] 896:9,10,11,14,17 C-1's [1] 897:1 C-2 [1] 897:19 C-WGN-only [1] 896:17 CA [1] 738:12 CABLE [148] 735:6 751:4,23 754:4,17 755:2 756:6,19 760:11 762:8 764:7,10 765:21,23 766:2,5,25 767:23,25 768:25 775:21 776:7 785:19 791:2 792:7,13,24 794:18 795:14 796:2,3,11,13,23 797:3 819:5 820:5 828:3 838:13,17,24 839:9,18 840:15 841:14 845:15 846:1 851:23 852:23 875:19 909:25 910:1,5,14,17,21 923:4,8 928:11 929:1 930:1,2,8,13 933:22 934:15 935:8,14,18 936:15,19 937:2 940:9,14,15 942:17 943:1,9 948:16,21 949:2,13,16 950:16,17 951:4,9,12,17,19,22 952:2,8 953:4,15,18 954:1,10,13,24 955:8,8 957:4,10,24 958:3,8,14,20 959:2,3,11,25 960:3,6,7,9,14,17,18 961:2,7,8,10,11,11,21,24 962:10,13,20,23 963:1,14,17 964:8 965:8,12 968:4,5,8,13,23 969:21 971:16,24,25 972:10 cadre [1] 912:24 calculate [2] 800:12,16 calculated [1] 769:22 calculation [2] 752:1 802:14 calculations [9] 742:12 743:23 744:6 746:20,20 747:1,2,18,21 calculator [1] 806:14 calendar [2] 834:7,18 California [2] 768:8 769:4 call [8] 755:25 773:3 825:4 826:21 860:22 868:21 913:16 953:11 called [9] 740:24 748:25 771:22 896:10 913:4 923:22 936:9 940:10 954:15 calling [3] 788:19 845:22,24 came [2] 753:9 779:25 Canada [1] 805:8 Canadian [34] 738:2 792:19 793:21,24 794:4,12,23 797:9,24,25 798:17 799:25 800:9,20,25 801:7,12,14,23 802:4,20 804:22 805:4,8 807:5,7,14 808:16 911:23 919:15,19,23,23 920:2 Canadians [3] 805:21 807:2 808:10 cancel [1] 788:11 cannot [2] 757:1 836:17 CANTOR [1] 736:5 capability [1] 860:5 capable [1] 925:8 capture [3] 762:3 763:20,25 captured [1] 945:25	capturing [1] 762:19 care [3] 841:18 948:13,14 careful [2] 805:18 920:10 Carole [1] 929:16 carriage [10] 762:20 844:5,12 845:6 846:3,24 847:4 949:18 952:10 953:17 carried [24] 749:23 760:12,15 763:14 771:23 778:2 819:5 830:4 852:23 853:8 854:12,21 856:13 870:5,6,16,23 887:23 935:8 964:22 965:18 970:18,18 971:6 carries [2] 872:11 972:10 carry [18] 762:25 767:2,3 777:11 846:2 895:9 939:16 940:15 949:23,25 953:19 954:10 964:12,14,17,19,25 968:9 carrying [5] 769:6 845:3 872:13 950:2 952:13 carve [1] 856:19 case [22] 741:21 753:11 761:5 762:6 793:12 830:16 831:13 851:13 857:11,12 890:22 916:12 930:23 934:21 939:4 945:16 946:5,12 950:9 963:10,16 974:11 cases [2] 767:21 919:12 categories [106] 764:3,11 767:9 768:2 776:24 777:8 792:11 813:2 819:4,24 820:9,10 837:22 838:1 839:5,11 841:3 842:17 844:18,19 846:5 849:10,17,23 850:5,8,13,15 853:8 855:9 857:8,19 858:5,16,17,18,20,25 859:1,2,6,7,14 860:1 868:15 870:4,11,18 871:3,14,21,25 872:4,5,7,21 873:19 874:18 876:17,19 877:6,14,17,24 878:7,10,11,16 880:15,18 882:21 883:5,11,13,20,22 884:3,10,16,18 887:5,9 889:3,7 890:15,16,20,22,24 891:8,14,14,18 895:3 898:12 901:4 903:6 904:18,19 906:5,10,11,16 950:20,23,25 category [57] 759:3,8 762:1 766:18 772:20 777:23 813:3 850:10,10 853:15 863:7 875:5 876:10,12,22 877:2,10 878:15,22,24 879:10,13,17 889:11,17,22 890:10 891:2,3 899:21 900:3 901:1,23 902:4,14,16 904:8,23,25 905:9,12,14,25 906:13,17,18,20 907:3,12,15,25 908:7,16,17 909:1,3 951:4 caused [2] 822:19 823:2 causes [1] 787:24 cautious [1] 866:24 caveat [1] 903:21 CBS [4] 856:21 934:6 936:3 943:4 CDC [1] 933:22 census [9] 916:18,19 917:7,7,17,25 919:3 Center's [1] 821:6 centers [1] 953:12 central [1] 882:22	certain [13] 787:24 789:15 828:11 836:17 844:8 845:4,7 846:1 870:4 887:1,3,4 956:4 Certainly [20] 750:2 754:14,18 756:4,10 759:19 768:23 775:6 782:21 784:19 802:13 819:16 829:9 834:1,21 898:19 899:3 914:4 926:8 946:11 CERTIFICATE [1] 976:1 certify [1] 976:3 cetera [3] 782:2 795:6,7 chairman [2] 929:13,15 chairperson [1] 929:9 Champaign [1] 935:20 chance [4] 766:1 850:23 891:9 900:20 change [2] 747:15,17 changed [2] 817:15 890:20 changes [7] 748:5 834:4,14,19 912:10 914:7,13 Changing [2] 847:12 891:14 channel [11] 952:10,13 953:17 968:12,16,17,22,24,25 969:10,13 channels [11] 767:2 797:20 804:11 805:9 908:10 953:19,21 954:2,3 968:9 969:9 chapter [1] 782:14 characteristics [1] 787:25 characterizing [1] 908:4 charge [4] 788:20,21 845:25 943:24 chart [1] 806:15 Charter [1] 851:22 charts [1] 798:14 chatter [1] 740:7 check [2] 799:5,8 cherry-pick [1] 746:5 Chicago [4] 901:25 936:7 950:14 956:2 CHO [50] 737:15 748:18,19 749:3,17,19 750:15 757:6 758:17,20 759:12 770:18 774:21 775:2,4,8,10,17,19 782:19,22 783:13,20,22,24 784:21,23 789:24 790:1,12,14 791:22,24 797:15,16,17 799:1,10 800:3,6 804:8,9 806:16 810:21 817:5 915:15 921:21 922:12,23 975:4 choice [1] 867:8 chooses [1] 743:15 chose [2] 838:7 892:19 chosen [3] 747:24 822:1,1 circle [1] 934:13 circled [1] 761:8 circuitous [1] 819:19 circumstance [1] 960:25 circumstances [1] 789:17 citations [1] 926:6 cite [2] 776:2 820:14 cited [2] 926:4 941:3 cites [1] 885:18 citing [4] 758:10 794:11 821:8,18	CityCenter [1] 737:18 Claimants [21] 736:2,18 737:13 738:2,15 739:2 741:2,22,24 742:15 746:13 784:7 792:19 794:23 797:9 837:20,21 911:23 930:16 956:23 964:2 Claimants' [3] 740:15 794:5,12 clarification [6] 743:20 744:17 746:12 797:1 824:24 970:13 clarified [1] 818:7 clarify [4] 771:7 795:25 824:14 915:21 clarity [2] 842:11 904:22 clean [1] 847:11 cleaning [1] 758:5 clear [22] 748:3 757:8 759:6 761:11 779:19 788:8 806:17 817:4 822:6 823:14 825:17 839:19 844:23 845:12 847:6 870:16 873:2 878:2,3 883:21 898:22 968:23 clear-cut [3] 828:3 905:8 924:1 clearly [18] 752:1 771:15 779:7 815:17 821:25 827:21 834:6 838:10,15 846:11 850:2 859:21 888:20 891:16 892:17 894:22 896:4 900:8 clips [1] 883:4 close [2] 805:17 851:8 cluster [9] 923:7,11,13,15,16,21,23,24,24 clustering [2] 770:7,9 clusters [1] 923:6 Coast [1] 769:4 coefficient [1] 923:22 cognitive [3] 859:9 860:15 913:4 cognitively [1] 861:2 colleagues [1] 927:18 collected [11] 751:22 755:21,24 765:25 771:14 780:15 811:13 816:13 818:22 837:19 917:18 collection [12] 752:14 755:11 765:11,18,20 766:12 789:1 822:13 831:4,20 832:5 833:2 collector [1] 865:2 collects [1] 752:18 colle [5] 877:22 878:18 879:12 931:24 932:4 colors [2] 934:12 938:14 column [2] 798:23 799:14 Comcast [2] 936:18,18 come [14] 747:25 791:20 795:6 804:6 805:12 809:17 811:16,22 825:25 916:17 918:16 920:6 933:20 936:2 comes [4] 757:25 845:16 861:20 944:4 coming [5] 740:6 779:18 810:16 825:18 973:3 commence [1] 831:6 commenced [1] 830:25 commented [1] 780:7 Commercial [11] 736:18 796:12
---	--	--	--

DOVE [1] 737:14 down [9] 776:15 860:12,14 867:3,13 908:1 910:11 956:14 972:6 drafting [1] 881:17 draw [3] 916:23 918:21 936:23 drawing [1] 782:12 drive [7] 764:24 882:20 912:12 driven [1] 803:22 drives [2] 878:24 923:16 driving [2] 789:9,12 drop [2] 968:9 969:22 drops [1] 751:17 drove [2] 879:11,17 drunk [2] 789:9,12 dry [1] 912:19 DSEs [3] 791:13,14,19 DSI [3] 791:20 794:24 795:19 due [1] 751:21 duly [2] 749:1 926:25 dumping [1] 936:10 uplicated [1] 955:13 during [12] 819:5 828:12 880:5 928:8 932:10 934:18 939:1 942:21,24 944:12 948:20 954:11 DUSTIN [1] 737:15 <hr/> E <hr/> e-mail [1] 973:22 each [29] 743:15,16 764:11 766:2 796:4 812:21 813:3,13,15,18 828:6,10 830:24 831:3 853:14,22 854:4 855:22 856:4,6,16 891:7 899:18 915:19 923:4,8 932:19 949:5 952:20 eagle [1] 897:5 earlier [6] 777:17 874:3 887:14 890:5 915:10 964:6 early [2] 931:16 934:23 ears [1] 902:13 ease [1] 892:18 easier [3] 795:9 799:13 895:7 East [1] 769:4 easy [5] 744:13 866:22 868:8 897:8 925:5 economic [2] 930:11 945:20 economics [1] 780:1 economist [1] 837:15 education [1] 957:2 effect [10] 744:5 748:4 805:1 849:18 873:4 874:12 888:8 922:21 936:9,9 effects [1] 924:21 efficiency [1] 973:12 effort [1] 755:11 egregious [1] 785:16 eight [20] 748:18 770:10 846:13 853:1 856:8 858:6,9,19,19,20,22,23 871:7 873:16,18 874:3,7 887:13 911:19 920:7 either [16] 781:21 816:14 823:12,20 824:6 829:10 851:12 865:12 867:8 868:3 901:14 904:13 923:20 937:3 955:8 962:4	Electronic [2] 928:24 929:25 elements [1] 937:18 elicit [1] 898:21 ELMO [1] 924:15 else's [1] 817:23 elsewhere [1] 927:9 embedded [1] 872:12 embellish [1] 880:5 emergency [1] 931:22 empirical [7] 781:24 816:2 826:9 827:13,17 828:20 926:8 employed [1] 742:24 employment [2] 927:25 966:21 encountered [4] 861:8,9 867:19,20 encourage [1] 829:1 end [5] 828:7 832:24 833:15 878:14 960:14 ending [1] 831:3 endorse [1] 779:1 ends [2] 960:22,22 engage [1] 914:8 enough [5] 756:3 823:1 825:5 893:22,22 ensure [1] 822:9 entire [7] 761:24 808:16 810:8 878:22 879:10,13 917:3 entirely [2] 906:13 960:23 entirety [2] 949:25 950:3 entrusted [2] 754:7,15 enumerated [1] 750:5 enumeration [1] 907:9 episodes [1] 826:4 episodic [5] 825:18 826:2,13 827:18 829:7 equal [3] 786:23 884:21 916:10 equates [1] 902:13 equivalent [2] 877:11 901:23 equivalents [1] 791:16 Errata [34] 740:18,24,25 741:3,7,22 742:10,11,13,19 743:22 744:8,9 745:15,18,19,25 746:8,14,15,17,19,19,23,25 747:2,3,10,11,12,14,16,19,22 erroneous [9] 741:11 824:21,22 907:1,7,13,23 908:2,5 error [30] 741:10,17 744:5 806:6,9 822:18 823:1,8,11,16,18,20,20,24 824:7,8,9,15,18,19,22,25 825:4,7,22 826:1 827:23 869:12 923:17,19 errors [15] 803:14,17 804:4 805:6,11 806:19 809:16,18 810:4 916:16 921:25 922:8,14 923:14 924:3 ERVIN [1] 736:20 ESQ [24] 736:3,4,5,6,7,13,19,20,21 737:3,4,5,6,7,14,15,16 738:3,9,16,17 739:3,4,5 essentially [2] 742:16 768:17 established [3] 803:1 814:3 925:22 establishment [9] 790:9 826:12,	21,23 827:1,11,25 828:22 establishments [3] 789:7 828:2 829:6 estimate [14] 752:21 764:14 772:2 775:14,23 802:5 806:6 809:24 848:5 887:21 918:23 919:3 920:19 921:3 estimates [23] 752:8 773:20 776:16 778:13 780:9 797:21 798:3 803:12 805:10,11,12 806:19 809:19 915:19 916:18 921:22,24 922:7 923:19 924:12 927:15 967:20 973:8 estimation [2] 752:19 780:25 estimations [1] 780:13 et [3] 782:2 795:6,7 evaluate [7] 768:2 810:2 834:10 857:7 908:7 952:9 953:16 evaluating [7] 781:22 evaluation [4] 753:13 856:6,8 857:25 even [24] 763:18 768:4 769:4 771:8 787:13 788:12 789:18 796:17 804:1 805:20 806:13 807:3,7 809:25 816:3 858:15 866:20 871:13 897:14 898:7 906:7 916:25 938:19,21 evening [4] 931:16,16 934:23,23 event [2] 932:6 972:8 events [1] 932:4 everybody [2] 753:4 757:24 everyone [1] 918:24 everything [3] 861:20 918:8 962:22 evidence [10] 743:3,5 745:11,17 749:15 782:10 783:16 784:12 787:2 930:23 evidenced [1] 937:24 exact [3] 818:16 887:25 902:7 exactly [10] 747:9 762:2 793:4 801:19 809:11 821:19 853:24 883:3 901:3 925:2 examination [7] 742:23 746:10 748:25 921:4,13 927:21 967:24 examine [2] 744:3 790:24 examined [2] 749:1 926:25 examining [2] 799:7 848:12 example [16] 756:22 760:10 762:20 777:4 785:16 788:1 796:3 807:7 881:12 889:10 932:25 937:17 939:14 951:3 961:7 963:16 examples [7] 899:16 905:12,21 908:19 933:11 940:3 941:3 Excel [1] 779:17 excellent [1] 859:23 except [2] 765:6 874:16 exceptionally [2] 788:8,12 excessive [1] 752:3 exchange [1] 962:21 excise [1] 950:7 excluded [2] 761:14 778:11 exclusive [1] 950:14	exclusivity [2] 956:3,8 Excuse [13] 753:23 816:6,23 837:7 861:6 875:16 876:8 880:22 881:6 903:4 914:16 921:7 964:10 excused [2] 926:17 973:3 executive [9] 765:22 768:25 770:17 792:24 839:18 894:15 910:4 923:8 929:9 executives [12] 770:16 775:22 820:5 838:14,17,24 839:9 841:15 845:16 860:5 894:2,13 exercise [6] 855:13 857:21,25 858:12,13 872:16 exercises [1] 858:13 exhaustive [1] 820:21 Exhibit [27] 749:5,12,14 750:18 774:23 775:7 782:23 784:25 820:16 851:5,6 857:11 864:6 869:3,24 887:1 895:20 930:23 933:13,15,15 935:10 936:14 937:17 940:2 971:4 975:19 exhibits [1] 850:23 exist [2] 815:9 875:12 exists [1] 873:5 exit [2] 913:1,16 expand [1] 889:6 expanded [3] 889:18 890:23 891:15 expect [6] 828:15,23 846:16 874:13 962:18 973:12 expected [1] 790:16 expense [4] 879:9 881:9,12 882:13 expensive [18] 844:14 853:14 873:13,21,22 878:19,23 879:16 880:9,19 881:7,8,20,22,23 882:8,13,15 experience [13] 890:17 929:19,24 930:2,6 944:1 947:3 957:9 960:3,10,11 961:15 966:19 expert [2] 910:21 931:3 expertise [3] 840:15,23 889:1 experts [7] 742:25 780:1 815:15 experts' [1] 905:7 explain [3] 912:8 923:1 925:1 explained [1] 898:11 explaining [1] 898:9 explicit [9] 863:6 864:11,18,21 865:7,20 866:10 868:5 925:4 explicitly [3] 866:19,25 925:9 exposed [1] 876:16 exposure [1] 788:3 express [2] 867:7 917:20 expressed [1] 917:21 expressing [1] 924:25 extend [2] 957:16 971:15 extended [1] 836:10 extent [4] 747:20 861:24 890:14 970:16 extrapolating [1] 809:22 extreme [2] 807:7 808:8 extremely [1] 802:19 eye [1] 897:5
--	--	---	--

F			
face [3] 809:5 830:20 922:13 faced [3] 850:11 872:7 877:16 fact [24] 742:3,5,10 745:24 753:18 762:6 766:11 776:19 780:23 781: 9 789:20 793:21 807:13 815:20 826:14 833:22 834:15 858:22 864: 7 885:10 903:15 905:11 907:1,19 factor [2] 879:11 946:20 factors [12] 751:19 768:21 769:18 821:14,23 822:11,12 905:3 945: 14,23 947:20 952:14 facts [1] 811:20 factual [2] 811:14 824:23 failure [3] 822:19 823:2 824:25 fair [23] 743:20,24 750:16 774:3 792:5 799:13 801:25 804:24 806: 17 818:15 819:13 823:1 825:5 839:13 859:23 886:7 893:12,22, 22 894:21 951:16 958:25 962:14 fairly [2] 786:8 914:2 fall [5] 757:16 758:9 909:1 917:16 959:24 falling [1] 918:6 falls [1] 759:15 familiar [8] 791:9 821:1 822:15 856:14 871:21 957:10 958:12,19 familiarity [1] 865:14 famous [1] 932:22 far [3] 741:7 842:3 961:6 farther [1] 938:19 fascinated [1] 849:1 favor [2] 750:20 864:19 feature [11] 901:1,2,16,17 902:5, 14 903:1,7,8,10 931:18 February [6] 735:17 745:1,9,23 780:10 974:18 FEDER [12] 735:10 743:8,9 758:7 770:3 772:22 778:25 816:23 848: 23 861:6,15 928:3 Federal [4] 788:2,10 790:11 821:6 feel [4] 815:24,25 880:4 911:9 fees [2] 962:19 965:9 few [6] 871:8 920:14,17 942:14 968:1 972:20 fewer [1] 948:4 fiberoptic [4] 958:20 959:3 961:7, 11 field [4] 812:1 832:23 834:16 835: 22 fielded [2] 914:4,5 figure [3] 805:14 908:8,10 figured [2] 808:14 897:5 filed [7] 740:17,19 741:22 743:15 746:13 747:8 796:15 filing [2] 742:3 780:10 filings [1] 746:7 filter [1] 864:7 filters [1] 924:23 final [1] 757:3 finally [3] 776:4 883:11 971:20 find [9] 764:7 774:6,19 775:16 831:	9 832:1 867:17 896:16 958:9 findings [1] 814:17 fine [3] 832:3 854:4 855:7 finish [4] 814:9,21 865:23 967:21 firm [1] 861:13 first [34] 740:13 803:13 804:6 821: 25 854:10 857:13,13 863:24 864: 1 865:9 869:4,6,7 871:15 879:13 897:15 898:20 904:1 905:6 906:1 913:2 921:17,19 926:25 927:5,12 931:9 933:13,19 940:2 957:6 970: 2 971:25 973:15 five [10] 773:22 774:1 825:24 850: 13 868:15 872:7 882:20 906:15 910:16 920:21 fixed [2] 776:23 849:21 fixed-dollar [4] 776:8 839:10 840: 2,4 flag [1] 866:2 flattened [1] 972:23 flaws [1] 750:17 flip [3] 806:15 864:5 896:12 Floor [1] 737:9 Florida [1] 948:24 focus [12] 780:2 841:21 849:10 852:25 853:5 858:22 859:2,12 897:18 898:16 913:5,13 focused [2] 791:6 964:5 focuses [3] 840:5 898:1 933:5 focusing [3] 763:4 786:11 858:4 folks [1] 967:3 follow [3] 777:24 801:5 973:17 following [7] 795:22 818:25 822:8 851:17 854:9,19 927:10 follows [4] 749:2 865:10 880:21 927:1 force [1] 862:6 forcing [1] 867:4 Ford [3] 915:10,12 919:8 Ford-Ringold [11] 792:20,23 797: 9,22 802:21 803:13 804:16,18 809:9,17 810:2 foregoing [1] 976:3 Forget [2] 809:8 908:8 forgotten [1] 972:7 form [6] 816:14 870:17,17,24 933: 1 934:3 forms [1] 933:7 formula [2] 916:2 923:18 formulate [1] 904:11 forth [2] 781:20 845:10 found [2] 776:4 787:15 foundation [2] 812:8 815:21 four [23] 753:4 757:23 758:13 759: 4,9 760:1,4,6,7,8,21 763:4,10,18 764:16 785:12 786:24 787:11 848: 21 901:13 906:21 923:25 924:3 fourth [3] 765:4,19 785:20 Fox [1] 856:24 fraction [1] 762:5 frame [15] 817:14 818:17 843:11, 24 844:6,25 854:23 855:5,19 874:	6 875:1,7,8 882:9 948:20 frames [1] 782:3 framework [1] 781:9 framing [1] 876:18 franchises [1] 902:17 Frankel [6] 769:24 780:5,6,12 922: 17 924:12 Frankel's [6] 778:16 780:14 921: 22,24 922:6,14 fraught [2] 824:7 827:23 free [2] 844:19 911:10 French [10] 793:23 794:25 804:12, 16 806:21,24 807:4,21 808:11 809:14 French-speaking [8] 793:6,12 795:24 797:20 804:11,20 809:7, 12 front [11] 740:10 746:24 750:4 774: 5,9 792:4 830:18 869:3 930:21 936:24 964:16 full [6] 786:7 891:6 924:23 934:20 939:2 964:15 fully [2] 779:1,21 function [5] 770:6 785:4 787:19 806:10 828:1 fund-raising [1] 932:13 FUNDS [1] 735:7 further [22] 743:7 749:1 757:2 794: 21 810:21 825:12 826:6 827:13 828:15,23 829:5 831:14 910:23 920:5 926:12 941:25 956:10 962: 6,10 963:21 967:10 972:25	Given [16] 755:15 756:16 793:4,5, 11 836:23 855:6 868:1 876:15 877:4 882:7 923:24 952:7 953:15 954:2 957:9 gives [2] 786:21 962:17 glad [2] 818:7 883:1 goal [3] 868:13 871:17 913:8 goings [1] 967:5 got [8] 772:11 796:7 801:20 808:14 860:20 899:11 927:8 973:22 gotten [2] 767:16 927:14 Government [3] 788:2,11 790:11 Governor's [1] 939:13 grab [1] 831:24 graduate [1] 939:20 graduated [1] 928:15 granted [2] 741:18,25 gravitate [1] 866:20 Gray [8] 740:19,25 741:9 744:4 747:13,15 748:5,7 Gray's [6] 741:7 742:2 744:18 745: 25 746:16 748:12 great [3] 789:23 791:4 816:25 greater [5] 754:13 768:14 769:18 770:11 966:23 greet [1] 942:11 GREGORY [2] 737:3 811:2 grounds [1] 882:15 Group [4] 738:2 792:19 797:9 807: 5 groups [6] 913:5,13 934:4 962:24 963:2,4 guess [12] 757:7 764:5 785:24 799: 2 800:20 802:23 805:20 808:21 810:5,6 869:13 925:13 guesses [1] 865:3 guessing [4] 863:16 864:8 925:17, 17 Guide [15] 749:5 781:6,13 782:1 783:15 784:12 790:2 820:17,22, 24 821:11,18 862:17 924:18,20 guideline [1] 790:11 guidelines [2] 849:16,22 gun [1] 864:20
		G	H
		game [5] 743:20,25 932:5,15 939: 19 games [2] 902:3,4 GARRETT [16] 736:3 745:21,22 746:11,25 747:4,8,12 748:2,14 749:10 973:7,14,19 974:4,12 GASANBEKOVA [1] 737:6 Gaston [1] 738:10 gathered [1] 822:3 gave [2] 750:1 807:4 geared [1] 898:21 gears [1] 778:4 Geez [1] 768:5 general [17] 776:14 790:8 861:18 910:15 928:22 930:7 943:18 945: 16 947:12,19 949:5,8 952:16,18, 25 953:25 964:13 generally [8] 931:10 934:1 949:11 953:4 957:17 960:1,12 966:20 generate [1] 916:21 generous [1] 759:10 gentlemen [1] 967:18 geographic [1] 936:10 Georgia [1] 972:9 gets [1] 936:8 getting [3] 796:2 805:3 827:5 give [10] 760:10 768:4 807:6 862:1, 8 863:10 883:12 891:9 924:15 925:4	Hagerstown [19] 940:9 941:1,1 956:6 961:24 963:17 964:5,7 965: 10,20,23 966:3,11,13,22,23 970:3, 11,14 Hagerstown-based [1] 954:13 half [7] 800:10 801:2,13,24 848:9 934:21,23 handful [1] 919:15 handing [1] 782:22 handled [1] 778:1 hands [1] 848:20 handy [1] 782:1 happens [1] 828:1 happy [2] 805:14 920:15 hard [3] 852:5 931:18 933:3 harder [1] 835:19 Hartman [1] 973:17

<p>Harvey [2] 757:25 973:16 hate [2] 806:1 883:16 head [3] 774:2 791:19 960:14 heading [1] 863:19 health [1] 859:23 hear [7] 740:6,8,9 743:3 816:7 848:17 956:16 heard [3] 745:9 871:14 973:7 hearing [4] 799:19 857:14 931:5 974:16 hearings [2] 915:2 926:8 held [1] 928:18 help [2] 898:15 932:18 helpful [1] 912:11 helps [3] 774:24 832:13 894:20 herself [1] 767:5 hesitant [1] 961:13 Hi [2] 956:21 964:3 high [16] 760:4 767:1 785:9,17 786:8,13 788:4,8,12 807:2 928:16 936:1 940:19 958:15,16 963:3 higher [2] 787:13 962:19 highest [1] 878:21 hired [1] 818:21 historic [1] 939:6 HIV [2] 788:4,9 hmm [2] 752:20 753:19 hoc [2] 818:23 836:21 hockey [1] 879:15 hold [1] 774:1 holders [1] 839:2 HOLMES [1] 737:4 home [5] 764:25 882:20 931:12 936:23 973:9 hometown [2] 938:2,3 homework [1] 750:1 homogeneous [1] 756:18 honestly [1] 904:1 Honor [27] 744:16,21 746:12 747:9 748:3,15 749:3,11 756:12 835:6,11 847:10 848:13,16 849:4 851:2 896:22 910:19,24 920:13,18 921:1 927:3 931:2 973:9,21 974:12 Honor's [1] 746:1 HONORABLE [3] 735:9,10,11 Honors [2] 921:15 942:5 hop [1] 959:6 hope [4] 900:11 946:11 955:7,8 hoped [1] 767:16 hopefully [2] 745:12 818:1 hoping [2] 749:25 974:5 Horowitz [63] 749:21,22 750:6,19 751:21 752:15 753:5,10 755:11,13,20 759:2,5 761:19,24 762:15 763:11,20 764:6,25 765:12 766:3,9 767:15,19 768:13,14 769:9,19 770:9,13 771:22 772:1,18 773:6,17,22,25 774:13,17,18 775:12 777:10 778:4 780:15 805:5,9 826:24 834:25 835:2 905:11 906:24 908:14 909:22 910:8 922:17,25 923:9,20,25 924:4,8,12</p>	<p>Horowitz' [1] 780:14 Horowitz's [1] 906:19 hot [3] 740:4,10,12 hour [6] 848:8,9 927:15 934:21,23 969:1 hours [6] 899:17 902:23 903:8,9 934:21 968:25 house [1] 936:25 household [1] 968:24 households [1] 969:12 however [1] 828:25 HUNZIKER [15] 737:16 775:17 783:22 784:21 789:24 790:12 791:22 800:3 804:8 963:24 964:1 967:10,14 970:1 975:12 husband's [1] 954:7 hypothetical [10] 768:16 795:8 796:19 802:1 803:7 808:17 838:22 839:15 872:17 873:4 hypothetically [5] 766:23,24 795:11 799:23 804:21</p> <hr/> <p>i.e [1] 957:24 IAIN [1] 736:13 idea [4] 844:24 867:5,21 902:25 ideal [2] 834:1 881:25 Ideally [1] 880:3 identification [2] 900:17 907:7 identified [13] 750:18 761:1 820:10 821:24 855:9 870:11 872:1 873:15 887:23 889:11,12 900:4 907:22 identifies [4] 852:22,24 899:23 901:1 identify [7] 751:24 761:12 804:25 851:16,18 856:11 885:11 identifying [2] 901:24 902:16 identity [1] 932:18 ignore [2] 746:9,9 Illinois [2] 935:20 936:3 illustrative [2] 908:21 935:18 imagination [1] 744:14 imagine [2] 935:1 939:21 impact [10] 753:16 755:14 756:25 761:19 766:14 770:11,14 809:9 922:24 924:2 impacts [1] 766:13 imperfect [1] 919:3 implementation [1] 781:19 import [3] 934:15 938:16 950:11 importance [7] 843:24 845:7 853:7 870:12,14 872:22 873:7 important [25] 755:9 768:7 770:5 803:13 835:20 844:18 865:25 870:3 872:23,24 891:5 914:1 935:14 936:12 937:9 939:4 940:25 941:5 945:6,7 951:8,12,20 954:20,21 importantly [1] 785:10 imported [2] 955:21 956:2 importing [1] 955:24 imports [1] 956:6 impossible [1] 816:4</p>	<p>improper [3] 866:9 867:7 868:2 improve [1] 829:1 improvements [1] 835:13 inaccuracy [1] 823:24 inaccurate [2] 754:23 823:11 inappropriate [1] 780:19 inauguration [1] 939:14 include [4] 868:5 883:16 944:15,18 included [9] 742:13 762:11 771:16 808:11 866:10 869:8 910:6 925:13 947:3 includes [4] 908:8,16 909:3 955:4 including [7] 810:5 850:2 906:17 908:13 924:21 929:7 935:21 inclusive [1] 942:18 incomplete [2] 741:12 742:7 inconsistent [1] 890:17 incorrect [4] 742:6 780:20 866:9 906:4 increase [1] 962:7 increases [1] 959:1 increasingly [1] 952:3 Independence [4] 735:15 922:11,18,24 Indiana [8] 928:2 934:7 935:2,24,25,25 936:2 937:1 indicated [4] 792:23 793:2 881:16 915:11 indicating [1] 942:11 indication [1] 866:3 indications [2] 860:9 881:15 individual [9] 755:12 756:5,6,17 876:2,11 877:13 879:2 950:17 individual's [1] 751:18 industry [16] 754:15 785:9 868:12 872:25 903:13,22 907:10 910:14,21 928:14 929:3,20 947:2 952:2 954:1 957:10 infer [1] 946:7 inference [1] 918:9 inferences [2] 916:23 917:17 inflate [1] 923:19 inflates [1] 923:16 inflating [1] 869:12 inflation [1] 808:6 influence [4] 754:25 755:12 761:18 766:22 Influenza [2] 973:24,25 informal [1] 927:14 information [43] 741:6 756:3,8,15,17 764:22 779:10,15 796:16 811:14,22 812:2 822:20 823:3 825:2,13,14,18 826:2,3,5 827:18 828:11,17,24 829:6 830:4,8 835:19 851:15 867:3 883:8 885:15 895:2 898:22,24 907:2,7,23 908:12 937:14 971:21 974:9 informative [1] 803:11 inner [1] 923:22 inquiries [1] 953:13 instance [9] 753:15 785:15 792:6</p>	<p>796:1,2 826:11 877:20 878:16 910:3 instances [21] 791:10,12,15 792:1,11 793:19,22 794:10,13,15 795:5,13 796:6,11,13,17,21 804:14 806:23 809:14 907:4 instead [2] 881:19 904:8 instruct [3] 773:19 775:13 925:12 instructed [3] 775:22 777:12 861:7 instruction [2] 776:14 925:16 instrument [5] 813:24,24 816:11 817:13 818:3 instruments [1] 896:18 integrate [1] 887:17 integrated [1] 768:9 intend [1] 846:8 intended [6] 843:16 872:15 888:16 889:4 890:11,15 interest [25] 782:2 788:16 829:3 834:18 837:11,18 838:11,16 841:15,20 871:22 898:9 916:24 931:25 936:1 938:21 941:4 945:18 950:6,8 952:20,24 969:24 970:21,24 interested [12] 816:3,4 873:20 898:23 939:22 941:10 966:6,25 967:4,5 968:14 970:3 interesting [2] 935:14 936:6 interject [1] 782:25 Internet [1] 937:14 interpret [1] 876:4 interpretation [3] 842:24 843:1,7 interpreted [1] 792:8 interpreting [1] 846:22 interval [13] 769:22 799:14,20 800:12,17,18,23 802:10 803:1 808:23 810:9,11 924:11 intervals [39] 770:6,12,14,20,23 771:3,9,13 798:4,15,21 800:8 802:17,22 803:10,20,21,22 804:2 809:21 817:7 818:9 915:19,23 916:14,17,21,22 917:15,22 918:5 919:19 922:2,6,7,16 924:7,8,14 interview [12] 765:4 766:6 767:20 768:1,9 773:11 822:8 853:5,22 892:24 898:6 917:8 interviewed [4] 765:24 778:11 792:25,25 Interviewer [24] 788:19 822:21 823:4 825:3 843:10 854:8,11,21 855:10 857:8,19 865:2 867:20,23 873:12,16 887:20 888:16 891:7,11,17,20 897:14 898:23 interviewers [14] 771:22 772:1 773:12,16,17 775:12 843:16 862:4 863:7 864:24 865:4 866:2 867:1,2 interviewing [2] 807:15 861:13 interviews [5] 771:17 833:23 913:4,13,17 introduced [3] 844:7 845:2 882:8</p>
---	---	---	--

<p> introducing [1] 846:4 introduction [1] 844:1 investigation [1] 865:12 investigative [1] 933:4 involved [2] 886:20 947:8 involving [1] 930:1 isn't [2] 755:22 762:2,9,16 763:12, 19 764:12 767:12 771:24 772:4 773:10 776:14,20 777:18 783:17 840:15 845:1 855:4 859:11 868: 11 879:21 884:19 887:25 890:19 904:13 918:3 951:14 issue [20] 761:23 789:8 790:7 797: 23 834:20 835:17 844:24 846:5 865:11,15 882:20 886:12,14 887: 9 912:1 919:7 922:10,18,25 950: 25 issues [14] 752:2 795:4 803:11 820:21,25 826:10 829:18 833:25 834:11 836:14 838:9 892:14 927: 7 937:15 item [1] 961:3 iterations [1] 914:21 itself [6] 784:8 814:3 875:19 932:6 940:7 972:14 IV [1] 735:20 </p> <hr/> <p style="text-align: center;">J</p> <p> jackets [1] 911:10 January [3] 741:1 742:1,19 Jeff [1] 924:15 JESSE [1] 735:10 JESSICA [2] 739:5 956:22 job [2] 768:17,23 Joe [2] 735:23 976:9 Joel [1] 885:12 JOHN [2] 736:19 969:3 Joint [1] 736:2 joke [1] 972:22 Journalism [1] 929:17 Jr [3] 736:19 737:14,16 JSC [3] 784:3 848:8 909:5 JUDGE [151] 740:3 743:8,9,11 744:1,3,12,23 745:4,8,16,21 746:3, 22 747:3,6,10,20 748:8,16,20 749: 9,12 750:11 753:23 754:1 755:15, 25 756:13 757:5 758:7,18 770:1,3 772:22 775:6,9 778:25 782:21,24 783:4,6 797:11,15 798:24 806:12 810:22 816:6,16,23 827:7 832:7, 17 835:8 839:19,24 840:7 847:12, 15 848:3,11,14,19,23,25 851:3,7, 12,20 852:12,15 861:6,15 866:8, 15 867:6 868:1,9,19,25 876:8,20 877:1,8,25 882:4,11 883:1 884:6, 12,22 895:18,21 896:13,23,24,25 897:3,4,4 900:13 903:4,20 904:5 910:22 911:2,7,16 914:16,23 915: 3,7 917:23 918:4,11,15 919:4 920: 11,17,19,22 921:2,6,10 925:11,18 926:13,21 927:2,4,20 928:3 931:5 938:1,5,10 942:2 948:7 956:13,17 967:13,17 971:12 972:20 973:5, </p>	<p> 11,18 974:2,8,13 JUDGES [17] 735:1 741:3,24 743: 2 744:11 803:9 810:7,15 815:21 816:9 829:11 831:12 837:16 838: 15 924:6 927:6,13 judgment [2] 806:5 868:21 Judicial [1] 821:6 jump [1] 915:9 justification [5] 905:2,7,8,23 906: 17 justify [2] 905:24 906:12 </p> <hr/> <p style="text-align: center;">K</p> <p> Karen [1] 976:12 Kaye [1] 736:8 keep [4] 800:4 824:15 856:24 958: 16 keeping [1] 869:23 KENDALL [1] 738:3 key [7] 781:20 782:1 835:1 841:13 871:22 883:24 884:5 KIENTZLE [1] 736:6 kind [16] 778:6 789:8 793:16 802: 13 809:23 818:23 841:17 906:10 932:15 938:25 941:10,16 948:6 966:10 970:20 971:2 kinds [6] 828:25 929:20 931:10 934:17 939:8 944:6 Kneeland [1] 929:16 Knicks [1] 900:14 know [1] 924:22 knowledge [6] 754:6,13 811:25 846:25 886:21 922:19 knowledgeable [1] 929:20 knows [1] 866:11 Knupp [1] 737:8 </p> <hr/> <p style="text-align: center;">L</p> <p> LAANE [17] 736:4 832:12 835:6 848:16 849:9 850:20 892:6 910: 19 920:13,18,21,25 921:9,14 925: 19 926:12 975:7 Laane's [1] 859:12 label [2] 889:17 891:2 labeled [2] 753:5 934:3 labeling [1] 901:22 lack [1] 786:9 ladies [1] 967:18 lag [3] 834:16 835:15 836:24 laid [1] 765:3 Lake [2] 936:8,9 language [18] 793:23 796:1 804: 12,16 806:21,24 807:6 845:11 879:21 880:1,4,7 882:1,24 890:17, 23 891:15 892:4 large [12] 751:20 764:20 788:6 805: 21 915:18 916:8 919:10 924:3 935:20 940:22 952:2,3 largely [2] 941:8 947:24 larger [5] 916:6 917:18 919:13 924: 11,13 largest [4] 762:6,9,21,25 Larson [1] 738:10 </p>	<p> last [8] 744:17 750:3 751:1 761:20, 23 825:21 910:16 939:25 late [4] 831:16 931:15,16 934:23 late-produced [1] 745:11 later [2] 818:1 870:9 latter [1] 818:12 Laughter [12] 805:16,19 827:9 832:9 848:22 867:10 900:15 911: 15 920:8,24 939:23 967:23 laws [1] 864:20 lawyers [1] 781:16 lay [1] 782:15 lead [2] 898:17 916:1 leading [1] 822:6 leads [1] 972:4 learn [1] 965:7 least [5] 773:23 788:9 872:23 875: 24 910:16 leave [2] 891:21 936:14 leaves [1] 955:15 lectern [1] 783:9 lecture [1] 787:16 led [1] 913:24 left [2] 749:20 971:17 legislative [1] 939:11 length [2] 783:7 853:21 Leonard [2] 885:12,20 less [14] 756:16 773:7 804:14 808: 25 809:2 825:13 827:14,22 828: 17,24 862:2 919:16 967:20 968: 14 level [14] 759:4 767:1,17 793:15 797:3 802:25 901:3 910:11,12 914:24 943:22 958:15,17 963:3 levels [2] 765:1 809:4 Library [3] 735:2,13 796:15 license [5] 875:12 888:7 950:17, 20 951:5 lies [3] 807:24,25 961:1 life [3] 750:14 826:16 827:2 life-style [1] 933:1 lighter [1] 933:1 lightning [1] 927:16 likely [5] 788:10 863:14 935:7 946: 7 962:7 limit [1] 853:3 limited [3] 820:17,19 957:20 limits [3] 742:11,12 743:23 line [7] 742:1 752:21 753:21 775: 18 907:11 936:23,24 line-up [1] 964:15 linear [1] 806:10 lingo [2] 791:17,18 link [1] 847:3 linked [2] 780:15 847:8 list [10] 750:5 854:11,20 855:1,8 857:14 871:14 902:2,24 908:19 listed [4] 853:2 877:5 902:21 904: 8 listen [4] 854:10,13,20 855:8 listing [2] 902:6,10 lists [1] 903:8 </p>	<p> litany [2] 891:13 907:23 literature [11] 781:24 782:11,13 820:13 826:9 828:21 849:24 917: 7 926:5,5,9 Litigation [1] 821:7 little [19] 743:24 750:22 788:1 793: 10 794:21 797:8,23 799:12 802: 11 803:3 809:2,2 810:13 886:25 889:18 892:5 956:14 964:4,11 live [8] 740:4 877:21 878:18 879: 11 900:3,9,9 966:3 lived [1] 936:7 LLP [8] 736:8,14,22 737:8,17 738: 10,18 739:6 loaded [1] 953:22 local [23] 931:13,14,19,21,23,23,24 932:1,3,13,14,23 937:3 939:3 940: 23 943:22 947:17 953:11 959:13 963:13,18 970:11 974:10 locally-generated [2] 930:18 935: 13 locally-produced [1] 955:16 located [2] 928:2 941:12 long [6] 835:21 836:4 928:13 938: 10,11 973:16 long-established [1] 906:11 longer [4] 806:18 836:3 884:17 917:24 longevity [1] 933:5 look [76] 742:25 743:18 745:7 751: 5 752:23,24 758:22 759:14 761:4 765:17 769:5 773:24 774:25 777: 5 779:16 780:4,10 781:18 784:18 786:3,5 788:25 789:1 792:18 793: 10 797:5 803:7,19 804:3 805:9 809:9,16,19 810:3,7 813:5 815:14 816:11 820:4 823:20 826:14 834: 3,24 837:15 839:22 843:20 844:1, 3,16 846:15 851:5 859:5 869:23 872:6 873:11 878:17 889:8,10 890:3 891:6 895:14 897:9,13 899: 7 900:18 901:20 905:14 907:5 908:18,22 921:20 922:6 935:17 937:16 955:2 969:8 looked [14] 753:2 756:24 761:21 794:2 802:13 803:10 813:10,12 814:6 833:12 900:23 907:20 909: 8 923:3 looking [47] 752:13,14 757:20,21 759:18 760:1 762:1 766:17 772:8 776:1,11 779:25 780:8 783:20 785:7 787:17 791:7 793:25 797:2 813:23 815:24 823:19 832:25 833: 8 836:17,20 841:24 842:1,9,14 846:20 848:8 873:12 875:11,16, 16,18 889:21 890:4 896:5,7,9,18 897:10 899:10 905:13 969:23 looks [4] 754:10 799:3 802:8 852: 5 Los [1] 738:11 lost [1] 920:16 lot [15] 753:20 762:25 764:20,21 </p>
--	---	--	--

<p>780:1 791:16,18 815:12 819:17 860:15 894:23 902:23 919:22 941:13 966:24 lots [1] 972:24 low [2] 785:17,18 LUCY [1] 737:4 lunch [1] 847:18 LUTZKER [3] 738:16,18,18 luxury [1] 750:22</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>M-a-r-c-i [1] 928:5 ma'am [1] 745:22 MACE [1] 736:21 MacLEAN [4] 739:3 744:15,16 745:5 made [17] 748:5 755:16 766:25 767:3 802:15 815:21 834:4,14 846:25 892:16 904:9 922:4,14 943:21 944:3 949:12,16 Madison [1] 735:14 madness [1] 911:17 magnitude [2] 769:17 770:8 maintain [1] 954:7 major [3] 812:22 820:24 902:17 majority [7] 831:22 832:18 833:2, 5,11,19,21 manage [1] 963:5 manager [3] 928:22 943:18 945:16 managers [8] 930:8 947:13,19 949:5,9 952:16 Manual [3] 820:15,20 821:6 many [16] 754:3,16 756:19 758:8 759:14 769:18 772:18 813:12 825:19,23 849:16,22 853:1 860:18 937:2 948:2 map [13] 858:23 870:19 871:2 933:16,20,21 934:2 935:17 937:18 950:10 971:5,10,17 March [1] 740:21 MARCI [3] 926:24 927:24 975:8 marked [3] 749:14 896:4 933:14 MARKED/RECEIVED [1] 975:19 market [29] 797:24 838:22 840:10, 15 844:20 873:8 885:9 888:12 932:25 934:8,11,13 937:22,23,25 939:7 940:3 945:18 946:10 950:14 952:21,22 953:1,7 965:20,23 966:2 971:6,13 marketing [2] 777:5 933:9 marketplace [41] 754:14 819:3,23 837:25 838:19,21 839:4,15 841:2, 5,7,25 842:5,17,21 872:10,14,17, 18 873:3,4,24 874:9,11,15,17,19 875:4,11,20 876:6,23 880:10 887:8 888:4,5,6,11,15,22,23 markets [4] 931:12 938:13 952:6 972:11 Maryland [9] 940:10 941:1,3,4,12, 13 948:23 964:17 970:14 Massachusetts [1] 736:9 matched [1] 786:7</p>	<p>material [1] 743:1 math [8] 798:20 799:12 800:5,7 802:8 806:1,12 810:1 Mathiowetz [21] 748:17,20,24 749:6,18 751:24 752:10 757:7 783:14 811:1 849:7 851:22 861:5 869:2 904:21 910:25 911:22 921:7,16 926:16 975:3 MATTER [3] 735:4 767:7 956:24 MATTHEW [1] 739:3 MCL [1] 821:15 McLaughlin [3] 779:7,11 780:17 McLaughlin's [3] 778:20 779:1, 20 McPHIE [1] 736:13 mean [61] 742:5 746:15 748:11 753:4 757:17,24 758:9 760:8,16 763:5 764:14,18 767:2 768:3,13 782:8,9 784:4 786:18 791:13 795:23 800:8,25 802:19,24 803:6 807:9,21 812:17 813:4 820:19 840:21 859:3,4 860:23 862:6 867:16 873:1 876:10 878:14 882:5,13 883:4 898:7 902:21 909:14 912:23 914:10 915:1 923:3 924:5 932:20 945:4,6 950:22 951:25 952:1,6 960:16 965:10 968:19 meaning [4] 819:14 875:4 884:8 915:21 meaningful [1] 924:24 means [8] 768:3 818:13 841:21 883:4 884:4 924:9 925:1 972:5 meant [2] 882:19 904:3 measure [12] 763:25 814:7,8,12 815:2,13,16 816:1 817:16 818:23 819:15 954:23 measured [3] 819:16,22 952:24 measurement [3] 823:20 825:22 827:22 measures [2] 815:15 819:14 measuring [1] 817:24 media [1] 928:8 median [9] 759:5,10,14 760:4,6,9, 22 764:7,17 medical [1] 931:18 member [3] 929:13,16,18 members [1] 966:6 memories [3] 826:4 828:5 829:8 memory [4] 825:24 828:1 964:16 965:6 men [1] 788:8 mentioned [10] 833:7 836:24 848:7 849:24 905:3 922:23 929:25 934:19 965:16,19 mentioning [1] 904:16 merely [1] 889:12 method [3] 779:21 911:16 958:9 methodologies [1] 766:20 methodologist [5] 779:24 810:16 841:12,18 907:12 methodology [11] 766:12 767:7, 11 779:3 781:10 811:11 885:8</p>	<p>886:13,15 925:23 926:3 methods [3] 850:6 913:7 958:13 metrics [1] 786:3 mic [1] 956:14 MICHAEL [2] 736:6 739:4 Michigan [9] 935:22 936:8,25 937:1,4,12,13,15 942:10 Microwave [3] 958:22 959:6 962:10 mics [4] 740:4,4,10,12 Mid-day [3] 899:24 931:15 934:22 midday [1] 901:7 middle [1] 897:25 Midwest [1] 768:7 might [22] 744:6 754:2 760:5,7 763:1,13 768:7 794:20 852:6 853:3 913:4,5 925:7 932:25 933:3,4 935:1 948:4 952:16 954:5,6 967:4 miles [1] 938:19 mind [8] 835:5 843:11,17 869:23 879:3,4 901:22 904:7 minds [1] 877:10 minus [2] 801:24 808:4 minute [1] 863:10 minutes [13] 748:18 783:3 817:25 854:2 871:8 911:6,19 920:7,21 926:15,15 927:15 934:22 misleading [2] 907:1 908:12 misled [2] 869:11 907:13 mismatch [1] 794:7 missed [1] 744:24 missing [3] 779:10,15 860:8 mission [1] 933:8 Missouri [1] 940:5 misstate [1] 842:18 mistakenly [1] 865:14 Mitchell [1] 737:8 mix [1] 857:3 mixing [1] 864:15 modified [1] 813:25 modify [1] 831:14 moment [2] 769:7 924:16 Monday [2] 973:23 974:5 money [2] 839:21 948:5 months [3] 833:16 860:19,21 Moreover [1] 759:2 Moring [1] 736:22 morning [12] 740:14 749:18,19 753:24,25 811:1,4 911:25 927:8 931:15 934:21 974:15 most [14] 743:13 787:22 788:9,16 803:13 805:1 844:4 846:23 851:17 860:4 872:23 878:19 951:16 963:11 mostly [1] 791:6 Motion [6] 740:15 741:2,19,25 742:22 746:12 motivated [1] 792:21 motivation [2] 787:23 793:16 mountains [6] 971:9,11,14,18 972:21,24 move [4] 749:4 753:20,21 823:22</p>	<p>moved [3] 741:23 746:14 910:11 moves [1] 751:16 movie [5] 877:20 900:25 902:5,20 903:23 movies [13] 901:14,15,19,23 902:15,21,22 903:6,18 944:18,22 951:5 955:5 moving [1] 742:15 MS [34] 744:21 745:2 778:20 779:7, 11,20 780:17 930:14 931:3,6,9 935:5 942:4,7,8,16 943:6 948:7, 11,12 951:7 955:18 956:9,10,16, 19,20 963:21,25 968:2,3 973:2 975:10,11 MSO [1] 759:3 much [15] 760:12 768:14 770:11 790:7 800:19 803:22 848:18 868:17 882:18 911:4 919:13 921:4 924:14,14 968:10 multi-system [1] 909:5 multiple [13] 751:9,23 752:16 765:13,16 766:5 769:10,14 777:8,23 909:7 910:7 965:17 multiples [1] 759:14 multiplicative [1] 787:19 multiply [1] 801:18 multiplying [1] 806:7 must [7] 744:24 821:16 829:16 952:8 957:6 960:17 964:25 must-carry [1] 970:7 MVPD [2] 935:19,20 MVPDs [1] 938:15</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N.W. [8] 736:9,15,23 737:9,19 738:5,19 739:7 name [6] 811:1 927:23 928:4 942:12 956:22 963:25 named [1] 930:12 NANCY [2] 748:24 975:3 narrow [1] 936:10 NASCAR [2] 908:8,9 national [4] 910:10,12 929:7 947:15 nationwide [2] 955:20 956:1 nature [12] 752:22 763:23 777:21 788:13 803:23 813:6 844:14 850:17 883:23 897:16,16 930:5 NBC [3] 856:21 929:14 943:4 near [1] 915:5 nearest [1] 799:12 necessarily [2] 853:3 904:4 necessary [1] 879:19 need [18] 745:25 754:25 788:20 793:10 796:14 841:19 867:17,23 868:14 880:4 903:2 908:1 910:2 918:18 953:16 959:3,5 962:9 needed [5] 775:23 778:6 815:25 816:1 831:14 needs [9] 761:25 958:9 961:8,9 974:11 negotiable [1] 962:22 negotiate [2] 944:23 959:21</p>
---	--	---	--

<p>negotiated [5] 945:9 947:19 959:10 961:2,3</p> <p>negotiation [1] 961:15</p> <p>negotiations [1] 960:21</p> <p>neither [2] 769:23 882:6</p> <p>network [7] 856:20 950:12 955:13 956:4,7 970:18,19</p> <p>networks [1] 943:4</p> <p>never [5] 806:12 845:1 865:12 921:3 947:5</p> <p>new [7] 746:21 815:24 816:2 906:2,13,17 922:3</p> <p>news [30] 890:3,5,11 899:21,24,24 901:7,7,10,11 928:19,20,21 929:12 931:14,18,18,19 933:2,3 934:20 936:2 939:3,9 940:20,24 941:4 954:19 966:9</p> <p>newscasts [1] 931:17</p> <p>newspapers [1] 928:12</p> <p>next [9] 777:25 800:4 810:23 880:17,21,23 898:1 928:16 933:25</p> <p>NHL [1] 879:15</p> <p>nice [1] 781:25</p> <p>nicely [1] 883:6</p> <p>Nielsen [3] 934:10 953:6 955:1</p> <p>Nielsen's [1] 948:8</p> <p>night [1] 904:3</p> <p>Niles [1] 936:25</p> <p>nine [2] 770:10 886:4</p> <p>non [1] 875:1</p> <p>non-commercial [1] 941:21</p> <p>non-compensable [4] 893:18 894:1,10,17</p> <p>non-economist [1] 845:17</p> <p>non-French [1] 807:5</p> <p>non-independence [7] 765:13 769:8,15,18,21,25 770:7</p> <p>non-network [6] 840:3 873:14 875:3 944:15,17 955:3</p> <p>non-protected [1] 955:16</p> <p>non-stricken [1] 744:18</p> <p>non-WGN-only [2] 852:1 893:3</p> <p>nondisclosure [1] 851:14</p> <p>None [3] 744:12 805:12 975:16</p> <p>Nonetheless [1] 933:6</p> <p>nonrespondents [7] 785:6,25 786:2 787:21 788:15,24 789:2,21</p> <p>nonresponse [29] 783:16 784:13 785:1,3,4,13,15 786:9,12,16,19,22,22 787:1,4,13,16,18,20 790:3,16 794:17 795:3,17 796:25 797:3,5 807:9</p> <p>noon [1] 847:16</p> <p>nor [2] 769:23 859:12</p> <p>normal [3] 759:21 760:5 939:8</p> <p>normally [2] 760:3 836:9</p> <p>north [1] 936:22</p> <p>notations [1] 861:8</p> <p>note [5] 761:21 835:20 866:1 867:3 973:21</p> <p>noted [1] 861:14</p> <p>notes [4] 787:16 790:10 860:7 976:5</p>	<p>5</p> <p>nothing [3] 756:13 817:14 926:12</p> <p>Notre [2] 935:2,4</p> <p>Notwithstanding [1] 835:13</p> <p>November [5] 744:19,19,24 745:3,4</p> <p>nowhere [1] 915:5</p> <p>Number [22] 749:14 752:15 754:9 759:18 775:7 808:19 846:21 849:9 854:3 859:14,16 862:22 885:3 899:17 913:7 916:6,9 923:3 935:9 939:6 968:21 969:12</p> <p>numbers [3] 784:6 809:11 923:10</p> <p>numerous [1] 751:4</p> <p>NYMAN [6] 739:5 956:16,19,22 963:21 975:11</p> <p style="text-align: center;">O</p> <p>o'clock [2] 934:24 974:14</p> <p>oath [1] 748:22</p> <p>object [1] 772:10</p> <p>objection [4] 749:9,10 910:19 931:5</p> <p>objections [1] 745:9</p> <p>objectivity [1] 822:10</p> <p>obligation [1] 960:23</p> <p>observation [1] 918:23</p> <p>observations [5] 757:16 765:14 917:20 919:11,22</p> <p>obviously [6] 767:17 784:19 810:19 819:7 890:22 935:23</p> <p>occurred [1] 833:23</p> <p>occurrences [1] 826:16</p> <p>occurs [1] 828:6</p> <p>off-network [1] 946:9</p> <p>offer [6] 756:21 778:19 782:10 831:18 870:3 941:17</p> <p>offered [6] 770:19 787:7 871:24 925:9 955:10,12</p> <p>offering [1] 741:19</p> <p>offers [2] 781:17,25</p> <p>often [5] 790:4 817:11,17 912:11 950:4</p> <p>Okay [129] 744:2 745:8 750:9 766:7 771:18 772:10 782:18 788:18 796:7 801:20 802:8 804:6 808:5 812:14 813:8 818:25 819:13 821:21 822:18 825:11 827:6 829:16 830:13 833:14,18 842:25 844:22 847:3 848:14,19 850:7,14,21,25 851:20,25 852:7,11 853:6,21 854:4 855:7,12 856:15,18 857:5,17 858:3 861:15 862:20 863:13 864:1 869:6 871:6,11,23 873:11 874:1 875:10 876:7 880:6 885:7 886:14,19,24 888:3,25 890:1 891:11 895:4 897:24 898:15,20 899:12 900:25 901:13,22 905:23 909:4,14,24 910:8,13 912:8 913:21,25 914:7,15 915:9,20,22 916:12 917:9 919:14,25 922:9,20,23 924:5 926:14 928:17 929:2 934:17 937:16 938:6 941:24 944:14 949:4,11 950:24</p>	<p>955:7 958:25 961:4 962:5,23 965:4,16 966:2,23 967:3,12 968:23 970:10,16 971:20 972:6,8,17 973:18</p> <p>OLANIRAN [53] 737:3 743:18,19 744:2 745:12,20 810:22,25 811:2 816:17 818:11 827:10 833:3 835:10,11,12 840:8 847:10,13,14 848:4,7 849:3,4,6 851:1,4,9,16,21 852:13,14,16,17 861:16 869:1 878:1 884:23 895:19,22,24 896:1,2,15,19,21 897:6 900:16 904:6 910:23 911:3 924:17 975:5</p> <p>old [1] 886:8</p> <p>omission [1] 771:11</p> <p>omitted [1] 742:18</p> <p>on-network [1] 946:8</p> <p>once [30] 752:12 755:19 756:24 758:2,10 761:3,20 768:24 769:17 770:8 780:21 786:4 794:22 795:18 829:3 840:22 844:1 850:4 857:17 863:1 865:19 877:5 881:14 882:17 884:15 904:17 907:6,9 917:16 923:18</p> <p>One [105] 737:18 745:3,6,12 746:11 751:8,18 752:6,20 753:2,14,19 754:3,18 755:1,4 757:18 759:19 760:18 761:23,24 764:19 765:11,15,23 766:6,22 767:15 771:5 772:10 773:10,15 783:14 784:6,6 785:21 788:2 790:7 792:6,7 794:6,9,12 796:2,2,8 799:2 802:2 803:21 807:15 812:24 815:2,7,11 816:10 817:5,20 820:3 821:11 822:13 823:6,10 836:17 838:9,24 851:25 853:10 863:19 866:16,16 868:16 874:13 875:17 877:19 883:25 884:16 889:24 890:4 891:2,2 897:5 900:11 901:15 902:4,5 905:2,20 906:10 910:5 914:4 915:20 917:20 918:25 925:12 937:5,16 943:7 948:23,23,24 965:19 968:25 973:25,25 974:3</p> <p>one-time-only [1] 901:8</p> <p>ones [2] 777:11 812:17</p> <p>only [54] 746:22 748:6,18 749:23 759:20 760:11 762:5 765:21 770:16 771:23 772:14 773:7 776:6 777:16 778:2 799:23 804:13 807:14 810:11 820:13 824:12 850:15 872:5 876:4 883:9 893:9 901:1 912:6 917:7,25 919:15 926:4 939:10 972:11</p> <p>open [2] 844:20 913:20</p> <p>opens [1] 887:19</p> <p>operate [1] 953:11</p> <p>operated [1] 930:9</p> <p>operations [3] 943:9,9 948:17</p> <p>operator [6] 766:25 794:18 935:8 948:16 961:10 962:20</p> <p>operator's [1] 960:19</p> <p>operators [4] 764:10 932:22 943:22,23</p>	<p>opinion [32] 755:18 757:8,9 759:13 760:20,24 772:6 780:19 781:12 786:18 793:18 794:14 798:1 808:22 811:10,16,21 824:23 827:20 843:15 861:25 862:12,15,25 863:15 864:9,21 865:11,18 866:21,25 867:9</p> <p>opinion/don't [1] 864:22</p> <p>opinions [2] 827:3 838:10</p> <p>opportunity [4] 862:1,23 882:5 893:2</p> <p>opposed [7] 756:8 797:4 823:8,10 827:1 846:5 903:23</p> <p>option [7] 864:1,6 865:16 867:12 924:22 958:20,23</p> <p>options [4] 862:10 863:19 864:9 924:18</p> <p>oral [1] 942:14</p> <p>orally [1] 954:16</p> <p>order [22] 740:13 741:5 757:2 795:1 800:14 804:23 831:13 854:7 859:17 870:11 871:6 872:21 873:21 874:1 879:14 880:19 881:7 927:12 951:11 952:12 957:22 962:20</p> <p>organizations [2] 929:3,5</p> <p>organized [1] 838:2</p> <p>original [3] 746:16 839:2,6</p> <p>originally [1] 906:15</p> <p>Orioles [1] 940:21</p> <p>other [68] 741:10 744:8 746:11 758:1 759:22 763:2,14,15 764:2,11 766:1 775:11 777:9,19 780:23 784:7 787:2 808:18 809:24 812:25 815:10 820:20 833:8 882:13,14 884:18 890:12 892:22 895:8,9 897:7 899:21 900:9 901:4,10,17 904:13,18,19,23,25 905:9,12,24 906:18,19 907:21,25 912:20,22 913:19 914:24,25 916:10 932:19 934:12,13 937:13,16 938:13 941:3 962:20 963:13 965:1 967:14 970:17 971:17 973:5</p> <p>others [3] 754:13 756:18 963:19</p> <p>Otherwise [3] 774:6 861:21 949:9</p> <p>out [44] 741:15 746:1,4 765:3 768:8 769:1 777:7 786:25 794:19 795:19 804:15 808:15 810:1,8 815:3,7 816:1 855:25 856:19,25,25 859:5,10 866:22 874:16 875:5 883:21 895:1 897:5 917:1 918:13,15 925:5 927:12 936:2,5 939:4 940:20 941:22 950:12 955:13 957:17 964:19 972:23</p> <p>outlier [19] 751:10,14,20 752:11,24 753:5,8 754:11 756:4,16 757:10,12,14 759:6,11,16 760:21 761:1,13</p> <p>outliers [1] 752:23</p> <p>outline [1] 771:19</p> <p>outside [1] 958:8</p>
---	---	--	---

<p>outweigh ^[1] 952:13 over ^[10] 759:4 765:8 792:14 834:5 864:5 906:10 910:15,15 928:17 969:7 over-the-air ^[4] 957:23 958:5 960: 5,7 overestimate ^[1] 823:25 overrepresentation ^[8] 797:20 804:10,19,25 806:20 807:10 808: 25 809:7 oversee ^[2] 947:6 949:8 overseeing ^[1] 947:7 oversight ^[1] 767:23 own ^[11] 743:17 750:23 770:20 809:12 810:20 811:25 825:15 827: 1 828:5 829:7 928:9 owned ^[6] 928:10 942:17,20,25 943:12 948:21 Owners ^[3] 839:7 840:21,22 owns ^[1] 951:23</p> <hr/> <p>P</p> <p>p.m ^[7] 847:20 848:2 903:15 904:2 926:19,20 974:16 page ^[29] 751:7 758:23 776:3 783: 19 784:3,4,6 797:18 798:7 819:10 830:10,10 832:15 837:3,8,9 863: 11 864:5 865:8 869:3 885:1,3,4 896:16,25 897:19 921:21 924:20 932:17 paid ^[3] 838:24 965:8,12 parade ^[1] 932:14 paragraph ^[30] 750:18 775:21 784: 1,24 785:1,3 794:1 804:7 819:8,9, 10,11 837:3,4,7,8,9 863:18,23 865: 9 869:4,6 870:9 885:1,4,7 897:16, 25 898:1 932:17 paragraphs ^[2] 898:8,21 paraphrasing ^[1] 829:23 parcel ^[1] 747:23 parse ^[3] 777:7 782:8 855:25 parsed ^[1] 859:10 parsing ^[2] 859:5 895:1 part ^[27] 747:23 750:25 780:11 785: 7 794:4 803:23 804:7 812:5 823:7, 18 831:8 854:14 857:3 858:25 859:1 860:7 864:9 899:18 906:25, 25 935:19 936:24 941:2,15 963: 20 964:24,24 participate ^[5] 762:14 787:25 788: 10,17 789:4 particular ^[48] 749:22 751:3,8,25 752:8 753:21 754:19 755:1,23 756:17,25 758:8 760:1 761:5,8,12 766:25 774:23 793:14 819:8 823: 15,23 824:10 825:7 826:16,17 828:7 829:2 830:7 831:20 834:11 851:19 854:3 869:11 876:12 877: 19,21 878:17,24 899:2 902:3 908: 11 912:18 926:7 946:2 953:1 968: 24 969:13 particularly ^[1] 873:20 parties ^[6] 741:10,14,16 749:7 927:</p>	<p>6,11 parts ^[7] 852:10 880:5 931:15 946: 19,19,23 965:1 party ^[2] 743:15,16 party's ^[1] 741:19 Pasadena ^[1] 738:12 past ^[14] 741:15,15 783:8 814:2 820:4 827:24 829:10,12,17 834: 23 837:16 860:19,21 892:15 path ^[2] 867:13 898:16 patterns ^[1] 900:18 Patton ^[1] 736:14 Pause ^[1] 774:20 pay ^[8] 844:14 960:8,9 961:10,11, 20,25 962:1 paying ^[2] 849:25 962:17 payments ^[1] 839:1 payoff ^[1] 853:17 pays ^[1] 962:6 PBS ^[6] 772:4 776:6,18 970:12,17, 18,19,24 PBS-only ^[4] 774:1 775:21 776:20 779:13 Pennsylvania ^[3] 736:23 966:14, 18 people ^[22] 753:7 789:4,4,10,12 808:9 823:25,25 825:17 827:18 828:1,4 841:8 843:5 868:14 872:7 911:13 919:1 936:13 951:16 966: 3,24 people's ^[1] 764:1 per ^[2] 770:17 919:12 perceive ^[1] 841:4 percent ^[93] 755:5 759:1,4,6 760: 19 762:7,8,11,13,14 766:10 771: 16 772:11,12,19 773:5,8,14,20 775:15,24 776:13,17 777:13 779: 12 785:11,18 788:7 790:17 798: 22,22 799:15,16 800:1,11,21,24, 25 801:2,2,8,10,11,12,14,18,18 802:5,6 803:6 804:13,15,23 805:4, 12,15,21,23,24 806:22,25 807:2,4, 6,17,20,21,23 808:1,4,4,7,10,13, 14,15,16,18 809:6,10,13 810:9 861:20 862:2 916:20 917:4,8,10, 16,25 918:16,20 922:15 percentage ^[22] 751:16,17 753:22 776:7 799:19 800:10 801:13,15, 24,25 803:2,5 804:2,5 805:2,24 807:11,22 808:24 809:1 840:4,5 percentages ^[1] 861:19 perfectly ^[3] 817:4 825:16 845:11 perform ^[6] 813:19 816:19 854:7 857:20 871:6 874:2 performance ^[2] 930:11 946:8 performed ^[1] 780:5 perhaps ^[3] 754:19 944:18 974:8 perils ^[1] 869:20 period ^[12] 829:3 832:20,24 835: 22 935:1 939:1,18 942:21,24 944: 12 953:12 969:7 permissible ^[1] 744:10</p>	<p>Permission ^[2] 775:2 782:19 permitted ^[1] 742:14 perplexed ^[1] 743:18 person ^[25] 752:20 753:14,19 754: 3,10,22 755:8 767:3,8 768:18 780: 12 817:14 840:11 843:22 844:4 845:24 846:2,16,23 867:17 868: 22 910:1,3 943:13 949:1 person's ^[1] 751:15 personal ^[2] 827:2 828:5 personally ^[1] 928:13 persons ^[1] 822:8 perspective ^[12] 788:23 814:2,6 842:2,4,22 843:17,23 846:20 883: 15,25 937:8 pertains ^[1] 810:11 phone ^[1] 860:22 phrase ^[6] 838:18 874:24 877:9 882:12 883:2 901:16 phrased ^[2] 830:19 876:14 phrases ^[4] 822:15 881:3,19,21 phrasing ^[2] 834:17 875:22 pick ^[2] 749:20 938:1 picked ^[1] 767:13 piece ^[5] 766:16 779:9,15 781:23 830:7 pieces ^[1] 823:5 Pillsbury ^[1] 739:6 pilot ^[13] 788:6,6 831:10 912:1,4,7, 8,16,18 913:14,24 914:10,11 pink ^[1] 972:1 Pittman ^[1] 739:6 place ^[5] 742:12 873:8 892:24 924: 10 959:16 placed ^[1] 911:12 places ^[2] 967:6 971:6 plagued ^[1] 755:22 Plan ^[2] 790:15 930:11 planning ^[1] 974:4 played ^[1] 902:11 playing ^[1] 900:8 please ^[13] 740:9 776:15 814:9,22 841:10 848:3 852:21 865:23 924: 16 926:22 927:2,23 928:4 PLLC ^[1] 738:4 plot ^[1] 826:1 PLOVNICK ^[3] 737:4 744:21 745: 2 plus ^[5] 801:24 895:9 905:13,19,20 point ^[57] 742:9 746:7,11 750:16 752:9 753:8 758:8,12 759:15 760: 1 761:20,23 764:24 776:18 784:2 788:2 800:10,20 801:14,24,25 802:5 803:2,5,12 804:2,5 805:2, 11,20,25 806:6,19,21 807:11,23 808:8,24 809:1,19 816:5 819:8 834:24 842:12 843:15 874:23 886: 7 898:12 902:9 911:11 915:19 918:23 919:2 936:5 939:4,10 943: 7 pointed ^[4] 741:15 761:8 794:19 804:15</p>	<p>pointing ^[1] 810:1 points ^[15] 745:23 751:17,18 761: 17,18 777:7 782:1 799:19 800:11 801:15 821:20 839:20 840:6 884: 9 905:5 political ^[2] 932:10,11 pool ^[8] 800:2,22 801:9 804:23 805:2,13 807:11 810:12 poor ^[1] 859:24 poorer ^[1] 826:5 popular ^[2] 903:23 946:9 populated ^[1] 780:22 populates ^[1] 795:5 population ^[19] 762:4,5 765:19 782:2 788:15 790:8 808:3,5 821: 25 822:2 838:11,16 841:15,20 916:24 917:10,11,13,19 Porter ^[1] 736:8 portion ^[3] 774:5 835:23 836:1 posed ^[4] 761:16 842:6 843:9 913: 10 positions ^[1] 928:18 possible ^[4] 762:24 787:12 795:15 796:24 post ^[2] 818:23 836:21 post-coaches ^[1] 932:5 post-game ^[2] 899:25 940:23 potential ^[8] 761:17,19 785:22 786:25 787:23 797:5 869:20 966: 5 potentially ^[3] 765:15 766:13 824: 7 power ^[1] 911:7 PQ ^[1] 916:4 practice ^[2] 879:19,25 pre ^[3] 899:25 932:4 940:23 pre-testing ^[5] 912:17,21,23 913: 1 914:9 predictive ^[3] 815:19 816:8,14 prefer ^[2] 774:16 954:4 preference ^[3] 793:4,5,11 preparation ^[1] 813:9 preparing ^[2] 787:3 830:22 prescribe ^[2] 862:9,18 present ^[8] 743:16 745:17 752:7 808:2 824:3 834:23 872:2 927:12 presentation ^[9] 901:2,2,17 902:5, 15,20 903:7,9,11 presentations ^[2] 903:1,17 presented ^[6] 743:3,5 745:19 842: 22 886:10 888:2 presents ^[1] 872:3 president ^[4] 928:22,24 929:25 930:13 pressure ^[4] 817:20,21 818:1,3 presumably ^[1] 900:9 presume ^[1] 817:9 presumes ^[2] 871:23 872:10 pretest ^[1] 912:19 pretty ^[1] 924:1 previous ^[6] 803:9 814:17 838:14 894:22 914:14,21</p>
---	--	--	---

<p>previously [1] 748:25 price [1] 947:21 primarily [3] 931:14 955:15 966:21 primary [2] 747:15 970:24 prime [9] 901:2,6 903:7,10,22,23,25 904:2 939:15 primed [1] 855:3 Primetime [1] 899:24 principally [1] 825:7 principles [1] 822:5 prior [6] 741:12 743:14 829:14,15 925:21,21 priori [2] 789:14,18 privately [1] 744:11 privy [2] 851:15 913:23 pro [1] 940:21 probability [1] 918:17 probably [8] 808:18 813:14 840:17 868:4 892:3 938:9 939:5 971:12 problem [7] 755:23 756:1,3,8 799:11 883:25 894:25 problems [4] 744:12 750:5 897:7 912:14 procedures [1] 822:8 proceed [1] 852:12 proceeding [15] 747:25 791:16 802:12,25 803:4 809:3 810:14 811:7 819:23 838:2 886:10 887:9 930:15 951:1 976:6 proceedings [9] 741:16 814:1 829:11,18 839:11 885:18 886:17 906:3 925:21 process [11] 793:8 822:9 856:18 861:1 893:7,24 894:7 910:9 947:6,7,13 processes [1] 859:9 produce [9] 795:19 887:18 929:22 931:11,14 932:2 934:18 944:11 971:2 produced [14] 764:14 772:18 794:4 802:18 810:4 812:18 889:18 890:6 922:5 924:12 933:21 934:19 935:3 944:8 producers [4] 840:17,20 842:8,9 produces [1] 954:19 producing [1] 764:17 product [1] 923:21 professional [5] 755:18 811:25 877:22 878:18 879:12 Professor [8] 753:24 758:7 903:5 914:17 921:7 926:16 proffer [1] 931:2 proffers [2] 758:20 775:4 Program [97] 737:2 740:17 741:21 742:16 743:12 762:1 764:2 766:18 768:2 770:21 811:3 820:8,10 821:3 837:22 844:18,19 846:5 847:4 850:9,22 853:8,15 855:9 857:8,18,19 858:24 860:1 868:15 870:11,18 871:3,14,21 872:5 874:</p>	<p>18 875:5 876:11,19 877:6,14,16,21,23 878:6,10,11,24 880:15,18 883:22 884:3,10,16,18 887:5,9 889:3 891:13,21 892:23 895:2 896:6 897:11 898:11 899:16,18 900:17,19,23 902:14,16 904:7 905:7 906:5 907:12 908:7,15,15 909:2 942:13 945:11,12,15,19,19,22 946:3,6,9,20 948:2,5 964:15 968:17 969:10 program's [1] 946:7 programing [2] 801:1 802:4 programming [127] 760:15 767:9 776:9 788:21 797:25 798:17 799:25 800:9,21 801:8,9,15,23 804:22 819:4,25 828:12,17 830:4 838:1 839:11 840:3,21 841:3 842:18,21 843:21,24 844:8,11 845:7 846:1,3,9,10,17,24 856:20 870:4,16,24 871:25 873:15,24 875:3,21 876:6,9,11,14,17,22 877:9,9 878:6 879:6 880:9 881:7 887:22 890:4 891:8,18 893:9 894:1,24 897:17 898:2,4,9,24 899:7,8,22 902:23 906:14 929:21 938:20,25 939:13 944:2,11,14,15,17,21 945:2,10 947:10 949:2,6,12,16,20,22 950:6,7,12,13,25 951:4,13 953:20 954:9,20,24 955:4,10,12,14,17 956:4,8 963:5,6 966:7,10 967:1,4 969:21,23 970:4,6,19,19,21,25 971:2 programs [46] 767:1 772:3 776:6 845:4 857:14 872:12,12 876:2 877:13 878:10 879:2 890:6,12 893:18 894:4,17 899:17,19 901:10 902:17 908:21,25,25 930:18 931:10 932:3,11,15,18 933:11 934:17 935:6 943:14,20,24 944:7,24 948:1 950:5,18,21,23 951:18 968:11,15,25 prompt [1] 773:13 proper [2] 822:8 970:14 properly [1] 867:15 properties [1] 928:9 proportion [1] 795:20 protected [1] 955:14 provide [14] 819:2 862:10,23 863:20 865:17 866:19 883:7 919:1 924:24 939:1 940:22 951:12 960:18 970:25 provided [10] 779:19 784:6 825:14 885:15 892:22 899:13 903:16 907:24 939:3 951:19 provider [2] 936:19 961:2 provides [1] 940:19 providing [2] 864:8 925:3 provision [5] 864:11,17 865:6,20 962:17 psychologist [1] 814:25 PTV [8] 759:3,5 761:20,22 771:16 773:7 970:11,17 PTV-only [2] 771:11 777:10</p>	<p>Public [42] 737:13 749:23 750:20 751:11,16 753:3,12 754:21 756:23 760:12,13 761:13 762:20,25 763:2,6,13,15 764:1,8,10 768:5 771:23 773:18 775:13 777:11 778:2,8 779:14 795:12 796:9,10,20 806:12 890:5 905:13 964:1,13,17 965:17 966:9 970:14 publication [1] 821:9 pull [5] 752:20,21 775:18 783:23 784:21 purchase [14] 769:1,3 841:8 843:5 845:18 873:23 875:3,5 876:5,22 878:23 879:4,14 953:6 purchased [4] 870:25 871:1 874:19 888:12 purchaser [3] 842:10 844:10 845:23 purchasers [2] 841:7,14 purchases [2] 840:11 879:7 purchasing [11] 788:21 839:4 840:18 846:25 847:4 872:24 878:6 879:2,5 880:9 947:4 purports [4] 814:8 815:16 819:15 837:24 purpose [2] 816:12 893:6 purposes [1] 799:24 pushes [1] 823:9 put [15] 754:24 757:25 783:9 789:25 791:23 808:21 817:22,24 818:15 853:3 867:7 871:18 908:1 916:2 930:21 puts [1] 781:20 putting [3] 782:13 792:9 913:3</p>	<p>12,17,18,24 884:5,24,25 886:24 887:2,19 888:4,4,10,15,21 889:6,16 890:5,18,19 891:3,6,22,23,24 893:21,21 894:6,6 897:9,9,13,15 903:3 908:14,23 914:2,2,3,5,18,18 917:3 939:25 952:17 953:22 questioned [1] 742:5 questioners [1] 845:21 questioning [2] 898:17 911:4 questionnaire [45] 774:2,14,17,18,25 781:19 813:11 814:5 815:25 831:14 834:2,3,5,14,25 835:3,4 844:17 847:9 851:23 852:1,9,11 863:2,3,5 864:17 865:21 866:23 872:3 886:9 889:2 892:7,11,19 897:11 908:14,24 912:6,11,15,20 913:1,3,25 questionnaires [7] 812:10 813:9 817:18 830:18 892:21,22 900:22 questions [74] 750:13 773:22 777:6 781:20 782:3 783:14 810:21 822:5 824:23 830:19 843:3,9,20,23 844:2 845:5,20 846:14,21 850:11 852:8 853:11 854:5,5,6 855:18 857:21 859:18 860:17 862:20,21 865:16 867:18,22,25 869:8,21 876:16 882:19,24 883:7,14,16 884:1,12,13,25 889:12 890:9 891:1 894:12 898:1,8 910:24 913:9 914:24 915:6 920:5,14,23,23 926:10,13 942:1,14 953:14 956:11 957:2 963:21 967:11,14 968:1 972:19,25 quick [4] 744:17 781:25 827:7 921:16 quickly [2] 776:12 860:23 quite [13] 755:16 757:7 764:3 773:8 792:21 879:16 883:6 884:19 894:5,6 904:1 925:7 972:20 quote [4] 869:19 885:10 924:19 954:21 quoted [1] 783:25 quotes [3] 774:5,15 821:22 quoting [3] 758:16 819:7 829:23</p>
<div>Q</div>			
<p>qualified [2] 822:7 931:6 quality [3] 960:5,13,18 quasi [1] 864:7 quasi-filters [1] 924:22 queried [1] 766:4 question [196] 743:16 745:13 750:10,21 756:11 761:6,16 763:24 764:4 770:2 772:7,8,13 773:24 775:11,16 776:1,22 777:3,16,18,19 778:24 784:10,11,16 810:6 811:19 812:3 813:5,25 815:18 817:1 818:7 820:1,6 823:22,23 824:2,5,6 825:6 826:15,20 832:23 833:4 834:8,18,22 835:9 837:11,14,18,23 838:5,6,19 839:14,20,24 841:13 842:7 843:6,13,18 846:21 850:16 852:18,21,22 853:6,7,12,13,14,17,18,18 854:14,15,16 855:4,6 856:10 857:12,15,24 858:2,4 859:4,12,15 860:13 861:4,17,18 862:16 864:3,10 865:13,24 866:7,17 867:4,8 868:3 869:14,15,24 870:1,10,22 871:11,15,18,19,19,20,22,23 872:1,9,10,14,20 873:11,12 874:4,16,25 875:15,18,23 876:9,25 878:2 879:22 880:7,7,8,14 881:2,6,14,18 882:2,22,25 883:8,9,</p>			
<div>R</div>			
<p>radio [3] 928:10,25 929:11 radius [2] 934:14 937:21 raise [1] 748:6 raised [2] 784:19 892:14 random [7] 790:4 793:8 869:12 917:23 918:1,10,21 range [1] 915:23 ranges [1] 802:6 rank [8] 860:1,2 870:10,13 874:7 881:6,6 884:15 ranked [1] 878:21 ranking [18] 853:7,14 855:12 857:21 858:11,12 862:21 871:7,13 872:16 873:21 878:15 879:9 880:18,24 881:24 883:23 897:15 rate [12] 779:8 780:24 785:9,10 787:9,20 788:5,7,13 790:17 859:</p>			

<p>22 916:20 rates [8] 785:4,17,18 786:13 787:14 789:19 791:7 934:10 rather [8] 756:23 759:25 764:18 867:3 912:20 922:7 rating [2] 947:25 969:2 ratings [3] 947:24 948:8,9 rationale [2] 893:23 894:8 Ravens [1] 940:21 read [16] 821:23 830:14 852:5,7 854:11,21 855:1,14,16 857:8 858:6 864:18 865:6 866:25 869:7 891:7 readers [1] 918:22 reading [3] 779:5 825:15 830:5 reads [1] 865:10 reaggregate [1] 857:17 reality [1] 740:11 realize [1] 889:5 realized [2] 779:9 780:25 really [16] 795:4 802:3 805:7 810:6 841:18 849:1 862:1,7 867:16 868:11 882:19 883:18,20 917:6 921:23 969:3 reason [11] 745:17 750:16 754:2 764:21 788:22 789:3,6 871:18 894:14 926:4 938:23 reasonable [7] 794:16,20 802:8 820:24 822:12 833:18,22 reasons [4] 741:23 831:19 909:21 965:19 Rebuttal [28] 744:22,24,25 745:14 746:17 747:4,6,11,13,14,16,23 750:23 751:7 756:21 758:15,23 774:10,11 779:5 780:7 797:18 798:8 799:4,5 802:17 907:23 921:20 rebuttals [2] 745:10,24 recall [49] 778:20 813:12 821:7,8,17,18 822:16,20 823:3,7,17 825:2,10,13 826:2,5,13 828:11,16 829:5,18 830:3,5 832:8 833:24 834:11,19 835:17 836:13 849:12 853:21,25 854:19,20 855:2,5,13,15,21 856:10,12 892:7 904:25 receive [7] 957:6,22 958:4,14 960:6 961:25 962:1 received [2] 749:15 792:7 receiving [3] 934:4 958:10 961:6 recent [2] 743:13 924:20 recess [8] 797:12,13 847:16,18 926:14,15,19 974:14 recessed [1] 974:17 recitation [1] 945:25 recognizing [1] 950:3 recommend [2] 868:5,10 reconvene [2] 847:17 974:17 record [22] 741:4,5 742:4,8,23 743:2,2 748:11,13 761:11 771:2,6 782:22 862:5 863:8 865:1,4 866:1 922:21 926:6 928:4 953:13 recuperation [1] 974:11</p>	<p>red [1] 934:14 redirect [8] 848:15 921:13 967:14,24 975:2 redrafted [1] 913:23 reduce [2] 863:16 864:8 reducing [1] 786:15 reinforcement [1] 786:21 refer [2] 820:9 923:6 Reference [24] 749:5 758:15 781:6,13 783:15 784:2,11 790:2 820:15,17 829:3 834:6 854:24 855:5,19 862:17 873:10 874:7 875:2,7 880:2 914:20 924:18,20 referenced [3] 841:5 850:3 888:21 references [1] 851:18 referencing [1] 891:17 referred [5] 746:13 817:11 821:14 889:13 901:14 referring [11] 804:11 812:19 832:23 834:22 870:5 881:20 884:7 915:15 948:8 957:18 970:22 refers [4] 880:14,23 882:15 903:25 refinement [1] 876:25 reflected [1] 968:10 regard [17] 811:21 814:15,16 824:12 826:21,22 827:11 836:11 837:23 849:9 850:15 875:10 906:19 909:4 910:13 920:1 961:17 regarding [8] 813:20 844:8 846:1 849:16,16,22 853:7 915:10 regardless [4] 761:25 763:7,24 883:13 regards [2] 814:17,20 regional [5] 910:3,4,11 931:19,24 regression [2] 752:21 753:21 regular [1] 931:22 regulated [1] 872:25 regulation [4] 872:18,19 873:1,5 regulatory [1] 873:8 Reid [2] 885:12,20 reiterate [1] 776:17 reiteration [1] 777:24 rejecting [1] 869:16 related [15] 751:3,18 752:3 786:5 788:3 795:4,20 820:22 825:9 826:2 829:6 853:14 872:4 906:25 939:13 relates [1] 949:17 relating [3] 786:15 853:13 883:8 relation [1] 759:6 relative [20] 760:14 772:2,9 797:24 820:5 837:17,25 838:18 841:2 842:16,20 880:14 881:23 887:4,8,21 893:9 922:24 945:20 969:15 relatively [3] 785:9 906:20 952:5 relay [3] 958:22 961:9,11 relays [2] 959:6 962:10 relevant [8] 837:11,14,17 reliability [17] 782:17 813:20 814:10,12 816:18,24 817:3,6,8,11,12,16 818:6,9,19,24 920:1</p>	<p>reliable [9] 781:13 782:6,9 818:3 819:2 825:13 827:14 828:18,20 relied [11] 782:15,16 787:3 811:16,20 814:1,17 820:4 821:6 829:10 862:18 rely [2] 782:17 953:5 relying [2] 761:3 907:8 remain [1] 748:21 remaining [1] 857:6 remains [1] 926:1 remains [7] 740:5 767:20 772:25 779:6,22 793:4 809:11 821:19 829:19 830:7 849:19 853:2,23 854:3 856:24 874:2 899:1 923:2,12 970:4 remind [4] 834:17,21 894:2 902:25 reminded [1] 830:13 remove [2] 741:4 751:15 render [2] 810:13 811:10 rendered [2] 797:21 915:12 rendering [1] 815:22 renders [3] 802:21 810:18 818:2 renewed [1] 747:1 renowned [1] 971:1 reorganize [2] 857:6,18 repeat [4] 811:18 822:23 870:21 887:14 rephrase [2] 762:22 893:20 report [30] 751:4,25 756:14 760:19 765:12,21 767:21,22 772:19 789:16 790:22 792:9 799:5 803:14,14 812:5 826:6 829:17 830:14 831:2,24 832:2,6,16 862:3,14 886:16 919:6 945:1 954:19 Reported [11] 735:23 751:9,23 794:8 803:15 822:3 853:23 861:11 921:24 930:8,13 Reporter [4] 770:1 928:20 976:10,13 reporters [1] 933:6 reporting [11] 752:16 753:6,15 755:2 765:15,23 826:11,18,25 910:7 923:9 reports [7] 794:5,12 811:24 863:9 901:9 919:20 931:21 represent [8] 756:19 821:21 841:1 842:16 865:3 942:13 956:23 964:1 representation [3] 778:12 786:24 809:15 representative [1] 822:2 represented [4] 764:20 808:7 837:21 906:15 represents [4] 756:7 842:22 887:8 903:22 reputable [1] 821:9 request [1] 960:19 require [1] 752:16 required [8] 854:8,17 881:5 894:20 950:9,11 requirement [1] 955:19 reread [2] 854:15 891:13</p>	<p>Research [13] 749:6 777:6 781:6,13,14,25 782:7,13 783:15 790:3 820:22 824:17 924:21 researcher [4] 782:12 841:23 843:14 860:13 researcher's [2] 846:19 859:19 researchers [6] 788:25 860:16 861:7 863:20 866:13 912:25 reserve [1] 806:4 resident [1] 937:1 resonates [1] 902:15 respect [64] 745:13 750:6 751:2,10 754:20 757:22 761:13,22,23 766:21 769:5 779:10 780:2 786:12 791:3 794:22,24 795:3,24 797:23 803:11 813:1,22 814:3,10 815:8,23 816:2,18 817:6,11 818:5,12 824:5 826:9 827:17 829:5 844:25 845:18 856:1 859:6 861:1 862:20 866:24 870:13 873:8 874:8,13 877:21 879:8 884:3 890:21 903:18 904:22 907:6,24 909:22,22,24 913:1 915:16 918:9 925:16 926:6 respond [6] 754:13 789:10,13 874:2 894:12 909:17 responded [3] 756:18 874:12 909:7 respondent [99] 751:8,22 755:1,1,4 756:25 758:24 765:12,15,20 766:22 767:13,19 769:9 776:23 777:7 818:18 822:16 823:11,14,18 824:9,15,20 825:1,12,14 826:11,25 828:11,16 829:2 834:6,17,21 835:18 844:6,25 845:2,22 846:12 854:8 855:15 857:13 858:10 859:24 860:8,20 862:5,23 863:8 864:19,25 865:3,6 867:1,4,14,16 870:10,18 871:2,12,20 872:15 874:4 875:2 876:15 877:5,10 878:17 879:3,5 880:8 883:10,17 884:1 886:25 887:3,12,21,24 888:17 890:25 891:12 895:6 897:18 898:10,16 899:5,13 902:12,14 903:1,18 908:6,20 923:4 924:23 respondent's [12] 753:3 822:19 823:2 826:3 827:15 871:24 872:11 873:14,23 876:18 881:15 887:22 respondents [88] 751:3 752:16 765:9 766:9,21 768:12 769:13 772:2,15,17,19 773:6,13,15 775:13 776:20 777:9,11,20 785:5,23,25 786:7 787:21,24 788:14,23 789:15,21 791:1 792:12 793:20,24 794:16 795:13 796:22 823:9,22 830:3 838:8 839:9 843:2,12,16 850:11 854:18 860:23 861:2,18 862:3,6,10,13 863:14,21 864:2 865:10,17 866:4,20 868:7 869:11,13 870:12 878:5 892:23 893:3,8,16,17,24 894:3,8,25 895:3 904:10 905:15 906:24 907:14,24 909:5,6,</p>
--	--	--	--

<p>16 912:13 913:6,9 925:4,13 respondents ^[1] 843:8 responding ^[8] 754:8,16 765:2 770:10 823:6 828:2 843:4 923:5 response ^[40] 751:19 752:22 768: 11 778:24 779:8 780:24 785:9,10, 17,18,22 786:13 787:9,14 788:5,7, 13 789:19 790:17 791:7 814:14, 23 823:18 824:4,17,19,21,22 825: 4 826:1 827:15 854:14 860:24 877:15 878:15 887:18 894:21 904: 11 916:20 918:1 responses ^[8] 759:1 769:8 772:23 773:1 828:18 869:10 responsibility ^[7] 754:8,16 960:1, 12,15 961:1,4 responsible ^[16] 754:3 765:22 768:22 843:21 844:4 846:2,17,23 910:2,4 929:17 943:8,14,19 949:1, 6 rest ^[2] 957:3 967:21 restricted ^[1] 851:6 result ^[1] 766:21 results ^[15] 750:19 783:17 784:13 786:20 787:5 795:16 813:21 818: 14 831:10,11 841:1 842:4,15,16 915:13 Resumed ^[5] 749:16 797:14 847: 19 849:5 926:20 retain ^[1] 951:11 retention ^[1] 951:8 retransmission ^[8] 959:17,21 960:20 961:14 962:15,19 retransmit ^[1] 957:5 retransmitted ^[3] 954:14 961:19 963:12 retrospect ^[1] 824:10 retrospective ^[8] 824:13 825:8,10 return ^[2] 748:21 771:19 reverts ^[1] 880:18 review ^[16] 750:23 781:10 811:9 812:8,14 813:8 818:25 846:12 852:10 889:2 900:20,21 912:4,5 925:20 953:9 reviewed ^[7] 767:24 790:21 812:9, 24 814:5 829:14 959:20 revised ^[2] 747:1 780:25 revises ^[1] 746:20 richest ^[1] 785:19 ring ^[1] 792:1 Ringold ^[3] 915:11,12 919:8 risk ^[1] 788:9 risks ^[1] 788:4 Roanoke ^[4] 937:22,23 971:5,18 Roanoke-Lynchburg ^[1] 971:13 Roanoke/Lynchburg ^[1] 937:23 Rob ^[1] 964:1 ROBERT ^[4] 736:3 737:16 885:13 886:2 Robles ^[1] 738:11 robust ^[1] 926:8 role ^[2] 811:5 944:2</p>	<p>roles ^[1] 943:6 RONALD ^[1] 737:14 room ^[4] 783:8 851:10,13 974:10 root ^[2] 916:4,7 roughly ^[4] 798:21 805:25 806:22 833:16 round ^[3] 798:19 807:16 927:16 rounding ^[4] 798:24 799:2,11 800: 19 route ^[1] 868:8 royalties ^[8] 820:2 837:19 839:6 873:9 888:24 965:13 ROYALTY ^[16] 735:1,7 800:1,22 801:9 804:23 805:2,13 807:11 810:12 828:7,12 829:22,25 839:1 965:9 RPR ^[1] 735:23 ruled ^[1] 746:22 rules ^[7] 757:13,15 758:2,3 955:24 ruling ^[3] 743:21 746:2 831:12 rulings ^[5] 803:9 829:15 838:14 892:15 894:23 run ^[3] 912:19 913:5 971:11</p> <p style="text-align: center;">S</p> <p>S.E ^[1] 735:15 safe ^[1] 953:18 sale ^[1] 947:9 sales ^[4] 947:4,12,15,17 same ^[50] 747:9 763:16 765:8,18 766:4,20 767:16 793:15 817:13, 14,15 818:2,4,14,16,17,17 826:8 827:17 828:20 843:8 852:7 873: 16,18,18 874:5,6,14 879:20 880:3 881:3,3 882:1 884:19 889:4 890: 11,15 891:18,22 895:11,12 901:3 903:21 912:16 925:11 936:18 937: 21 938:23 939:2 950:15 sample ^[39] 767:21 785:23,24 786: 6 794:24 800:13,14 802:20 803: 23,24 804:17 806:25 808:7,9 810: 18 822:1 841:16 845:14,15 910:6 915:12,17,25 916:5,5,8,18,23 917: 2,5,12,24 918:1,10,21 919:8,10,13, 14 sampled ^[5] 762:13 763:8 779:12 793:3 910:1 sampling ^[3] 762:4 781:18 844:25 Samuel ^[2] 885:10,15 SATTERFIELD ^[2] 738:3,4 Saturday ^[2] 903:15 904:3 saw ^[2] 794:7 904:2 saying ^[18] 754:21,22 766:8 782:6 802:3 812:1 827:16 834:13 842: 14,20 846:7,11 870:23 874:17 883:9 894:13 960:7 969:18 says ^[16] 776:15 786:17 859:22 867:14 875:23 876:5 878:17 880: 22,23 891:7 896:14 897:21 898:3 908:17 910:1 925:11 scale ^[1] 760:14 scarcity ^[1] 948:2 scenario ^[2] 767:6 768:16</p>	<p>schedule ^[2] 927:7 974:7 scheme ^[1] 888:7 Scholer ^[1] 736:8 school ^[1] 928:16 Schurz ^[21] 928:1,9,10 942:16,20, 25 943:7,12 948:20 949:22 951: 23 952:14 953:11,18 954:23 960: 11 961:17,20 964:7,9,10 Schurz ^[16] 944:7,20 945:8 947: 14 948:16 949:13,16 950:16,17 951:4,9,12 952:8 953:15 954:10 955:7 Schurz-owned ^[2] 934:6 940:9 sciences ^[1] 815:12 scientific ^[1] 782:10 scope ^[1] 820:16 screen ^[2] 797:19 830:9 screened ^[1] 867:15 screening ^[3] 846:21 852:18 910: 9 SEAN ^[1] 736:4 search ^[1] 825:24 seasons ^[1] 932:10 seated ^[3] 848:3 926:22 927:2 Second ^[16] 746:16,19,25 747:3, 11,14,16,22 786:10 823:7 855:7 863:18 864:6 875:17 880:13 962: 8 secret ^[1] 742:7 section ^[10] 852:19 863:14 864:8 873:2,3,9 874:11 875:11 888:7,23 see ^[87] 755:3,12 756:24 757:21 766:14 770:12,16 774:16 779:7 785:21 786:23 790:17,19,24 791: 7 792:13 793:16 797:2 803:21 807:19 815:14 816:11,13 818:3 819:9,12 830:12 831:1,13 832:8 833:13 834:4 835:21 836:6 837: 11 838:13 850:19 851:23,24 852: 3 853:9 860:6,8,9 863:1,2,4,6,16, 21 864:3,14 866:21 869:17 872:6 876:9 879:6 880:11,15,19,24 881: 8,15 887:24 889:14,20 899:19 900:1,6 902:1 905:2,6,11,24 906: 13 912:12,13 918:8 923:13,20 924:1,10,13 933:17 967:17 972:6 973:3 seeing ^[3] 809:5 829:19 833:9 seeking ^[1] 917:24 seeks ^[1] 828:10 seem ^[2] 776:17 822:12 seems ^[2] 781:1 957:1 seen ^[8] 832:10 838:15 914:23 915: 6 922:20 973:11 sees ^[2] 786:8 803:21 selected ^[1] 792:24 self-explanatory ^[3] 902:19 903: 5,11 sell ^[1] 945:22 seller ^[2] 840:13 841:25 sellers ^[5] 840:17 841:13,19 944: 23 945:9</p>	<p>send ^[1] 898:5 Senior ^[2] 928:1,23 seniority ^[1] 933:5 sense ^[5] 777:21 815:19 817:20 952:23 960:16 sensible ^[1] 781:17 sensitive ^[4] 752:6,19 753:18 766: 11 sensitivity ^[4] 751:13 758:6 766: 14,17 sent ^[1] 973:8 sentence ^[8] 804:7 865:9 869:7 880:13,17,21,22,23 separate ^[4] 892:10 905:5 938:15 952:5 separately ^[3] 765:25 766:3 769:4 September ^[1] 744:25 series ^[8] 887:17 889:13 902:8,9 944:18,22 955:4 967:5 served ^[4] 812:7 929:8,13 943:18 service ^[6] 937:2 941:8 957:15 961:9,12 966:22 services ^[1] 958:22 serving ^[1] 894:3 SESSION ^[3] 848:1 939:11 975:14 SESSIONS ^[1] 975:16 set ^[5] 757:18 794:6,6 906:5 965:9 set-top ^[3] 953:8 955:1 968:6 sets ^[2] 784:5 875:1 Settling ^[2] 738:15 739:2 seven ^[9] 746:13 850:13 858:14 868:16 872:8 880:15 882:21 886: 5 906:16 Seventeenth ^[1] 739:7 several ^[9] 741:14 752:4 773:5 812:20 821:14,23 849:13 929:6 942:20 severe ^[1] 932:7 share ^[9] 795:12 796:20 800:24 802:4 808:17 947:25 shares ^[3] 778:7,17 780:19 Shari ^[1] 781:5 Shaw ^[1] 739:6 sheet ^[1] 925:12 short ^[1] 934:9 shouldn't ^[2] 805:23 834:9 show ^[3] 800:4 908:16 937:19 showed ^[3] 751:13,14 950:10 shown ^[3] 883:4 934:2 935:10 shows ^[15] 753:14 756:22 831:2 889:9,13,21 899:23,25 905:15 908:17,19 924:22 932:5 940:2 972:1 shuffle ^[2] 920:16 974:6 side ^[9] 748:1 910:8 928:19 935:24 937:23 948:16 968:13,18 971:17 side-bar ^[1] 740:7 sign ^[1] 951:17 signal ^[60] 772:14 791:15 792:6 793:1 796:3 819:4 840:22 856:4, 12 875:6 887:23 902:18 908:11 934:5,16 935:9 937:6,9 938:16</p>
---	--	---	--

<p>940:16 941:23 949:17,24 950:11 955:22,25 956:2,6 957:5,6,12,16, 19,23 958:1,4,5,8,10,14 959:6,9, 24 960:2,5,9,13,18 961:7,8 962:1, 16,17 963:11,18 965:1 968:11 970:17 971:7 972:11 signaling [1] 891:12 signalled [1] 861:12 signals [79] 766:5 767:3,10,25 769: 1,6 771:23 778:2 793:6,12,14,25 796:5 797:25 798:17 807:21 813: 7 819:24 837:19 839:15 840:12, 18,19 841:8 843:5 844:10 845:8, 18,23 846:6,12 852:22,25 853:4 854:11,15,20 855:14,16,20,22 856: 2,7,8,17 857:4 858:6,20,23,24 870: 6,17,19,24,25 871:1 872:5,13,25 873:16,18 874:7,21 895:9 919:15, 24 920:2 930:20 940:14 945:3 950:18,21 951:5 952:20 954:11 961:21 969:22 970:7 Signature [2] 976:10,13 signed [1] 851:14 significant [9] 809:15 833:24 906: 21,23 914:12 935:3 939:16 941:6 significantly [2] 906:9 924:13 Silberberg [1] 737:8 similar [7] 779:8 821:11 881:9 902: 1 914:5 937:18 940:3 simple [1] 918:10 simpler [1] 798:20 simplest [1] 860:4 simplify [1] 879:24 simply [4] 785:3 898:13 901:15 904:8 Since [8] 754:9 760:21 833:20 840: 18 845:17 872:10 873:7 928:15 Singer [1] 973:15 single [18] 751:22 755:2,12 758:24 759:3 765:21 767:19 768:1,4,9 772:14 777:23 793:1 812:23 813: 11 824:5,6 860:14 sit [3] 779:11 780:16 783:11 sitting [7] 755:7 756:9 791:20 805: 17 806:8 819:19 904:19 situation [2] 875:19 945:20 six [22] 850:13 858:15,16,17,17,20, 24 859:5 860:1 868:15 872:8 873: 18 877:5,16,23 882:20 890:22,24 891:8,13,18 906:15 size [21] 800:13,14 802:20 803:23 916:5,6,8 919:8,13 923:7,11,13,15, 15,21,23,24,25 946:2 952:7 953: 15 sizes [3] 810:18 915:12 916:1 skating [2] 908:8,10 skill [1] 976:4 slide [10] 750:7 783:23 789:25 790: 13 791:23 798:10 800:4 802:3 923:12 974:10 slides [1] 752:5 slightly [1] 765:7</p>	<p>slot [1] 904:3 slots [1] 903:16 small [18] 752:15 762:5 799:19 802:19 810:12,18 915:11,17,25 916:9,13,15 917:1,2 919:8 951:23, 25 963:20 smaller [2] 916:5 952:6 smart [1] 742:25 snow [2] 936:9,10 social [1] 815:12 sold [1] 947:5 sole [2] 937:13 961:1 solution [1] 925:12 solve [1] 897:8 somehow [3] 872:12 882:15 957: 6 someone [11] 752:18 754:12 772: 9 788:20 793:7 826:6 843:20 867: 19,20,24 974:9 sometime [2] 783:1 828:6 sometimes [6] 752:16 848:10 868: 7 872:8 880:4 957:16 somewhat [3] 754:12 820:17 924: 10 somewhere [4] 800:1 801:10 832: 5,11 soon [1] 783:12 sorry [35] 748:8 762:23 768:13,15 775:12 784:5 791:14 795:22 798: 7,15 800:16 801:4,7,21 806:3 811: 18 814:9 819:10 827:8 835:25 848:24 852:16 854:6 858:17 870: 21 885:4 889:23 896:11,15 909: 14 913:18 940:14 958:7 962:4 969:19 sort [7] 756:1 771:7 887:2 900:18 918:17 947:8 972:2 sought [4] 822:21 823:4 825:2 944:20 sound [1] 740:3 sounds [3] 787:15 805:22 860:15 source [2] 755:22 937:13 sources [1] 885:11 South [5] 928:2 934:7,10 935:1 956:1 Sox [4] 899:25 900:5 901:24 904: 14 speaking [4] 794:25 807:22 808: 12 906:21 speaks [1] 750:25 special [11] 889:10 893:6,15,23,24 894:7 901:9 932:2,9 939:12 967:6 specialist [1] 907:10 specialized [1] 932:2 specials [2] 889:14 901:8 specific [14] 783:19 844:16 879: 23 884:25 899:23 900:4 908:19, 23 925:16 933:11 968:14,17 969: 4,10 specifically [11] 761:5,22 773:24 776:10 791:5 834:24 839:22 940: 22 949:15 953:6 972:3</p>	<p>specifics [1] 962:3 spell [1] 928:3 spend [2] 779:2 921:5 spent [1] 840:2 sporting [3] 932:3,6 940:20 Sports [36] 736:2 740:15 741:22, 24 742:15 784:7 798:16 800:9,24 801:1,9,23 802:4 877:22 878:18 879:12 900:4,5,10 902:16,17 904: 23,25 905:9,12,25 906:18,20 907: 21,25 931:23,23 935:4 939:16,17 954:20 spot [1] 947:23 spotlights [1] 967:5 spots [5] 947:9,20 948:3,4,6 sprawling [1] 972:2 spread [1] 769:2 spreadsheets [1] 779:17 Springfield [1] 940:5 square [2] 916:4,7 Squire [1] 736:14 staff [1] 939:11 stand [7] 748:21 758:1 783:2,10 806:2 843:14 870:15 standalone [1] 952:5 standard [28] 757:17,23 758:8 759:18,24 803:14,15,17,17 804:4 805:6,11 806:6,9,18 809:16,18 810:3 841:6 879:18 916:16 921: 25 922:8,14 923:14,17,19 924:2 standards [2] 757:18,19 standpoint [1] 859:19 stars [1] 740:11 start [11] 832:24 833:9 836:7,9 849: 25 867:13 871:20 874:16 909:25 916:19 917:1 started [7] 767:14,15 779:23 836:8 910:10,12 928:19 starting [1] 916:14 starts [3] 863:19,23 867:14 state [9] 785:3 837:5,9 885:8 927: 23 936:23,24 972:14 stated [5] 818:12,13 839:17 947:1 951:22 statement [7] 790:5 804:12 856:9 885:12 887:20 930:25 932:17 statements [1] 933:9 STATES [4] 735:1 790:3,15 870:1 station [32] 776:7 796:9 800:21 804:22 856:24 889:24 928:22 932: 19 933:1,4,4 935:8 936:3 939:6, 10,15 948:2 949:25 954:14 959:2, 10 960:4,7,8,13,16,17 962:12,18 964:7 965:2,8 station's [7] 945:20 957:5,11,19, 23,25 958:4 station-produced [3] 890:12 899: 22 933:11 station-to-station [2] 932:24 933: 7 stations [59] 772:4 779:14 793:23 799:25 800:9 804:12,20 806:22</p>	<p>807:4,6 859:25 870:5,6 873:15 889:19 890:7 892:18 905:16,19, 19,20 928:11,11 929:22 930:19 931:11,13 932:1,19 937:3 941:13, 16,21 942:21 943:1,3,12,15 944:3, 7,10,20,22 945:8,10 946:1,6,15 947:11,14,22 955:19 956:3 961: 18,20 964:12,14 965:17 970:9 stations' [1] 802:4 stations's [1] 801:1 statistical [11] 754:11 756:4,15 757:13 782:16 802:15 813:19 816: 19 822:5 918:9,17 statistician [2] 758:1 814:24 statisticians [3] 757:14,19 806:13 statistics [4] 807:25 817:2 819:17 918:7 stay [1] 835:3 steaks [1] 859:4 steal [1] 834:2 Steckel [3] 821:2,14 850:3 Steckel's [1] 821:22 stenographic [1] 976:5 step [5] 793:20 795:25 860:15 892: 13 965:22 steps [9] 858:9,14,19,22 863:15 871:8 874:3 887:13,17 STERNBERG [1] 738:17 STEWART [20] 736:19 927:3,4,5, 22 928:7 931:2,7,8 938:7,17 939: 24 941:25 942:3 967:15,16,19,25 972:18 975:9 sticking [1] 763:9 still [14] 798:1 810:13 836:10 869: 3 873:3 874:4,6 878:14 917:12,13 938:22 953:11 966:16 974:4 stored [1] 826:3 straddles [1] 936:24 straight [1] 936:22 straightforward [1] 859:21 strata [11] 764:16 765:7,19 779:8, 13 785:12,17,20 786:14,24 791:8 strategic [1] 930:11 strategies [1] 743:17 stratum [16] 762:7,9,13,21,25 763: 3,5,7,10,16,18,21,24 764:16 765:4, 5 Street [9] 736:15 737:9,19 738:5, 19 739:7 stretches [1] 935:20 stricken [1] 746:18 Strickland [2] 735:23 976:9 STRICKLER [56] 735:11 753:23 754:1 755:15,25 756:13 757:5 798:24 816:6,16 827:7 832:7,17 839:19,24 840:7 866:8,15 867:6 868:1,9,19,25 876:8,20 877:1,8,25 882:4,11 883:1 884:6,12,22 895: 18,21 896:13,24 897:3 900:13 903:4,20 904:5 914:16,23 915:3,7 917:23 918:4,11,15 919:4 920:22 921:2 925:11,18</p>
--	---	---	--

Strickler's [1] 897:4 strike [6] 741:23 746:14 824:10 846:18 881:4 893:13 strive [1] 822:13 struck [7] 741:3 742:18,19,20,20, 21 794:22 studies [7] 770:21 824:13 832:19, 20 833:2 913:15 954:1 study [19] 788:6,7 797:22 802:11 803:3 810:13 818:13 825:8 828:8 831:10 912:1,4,7,9,16,18 915:11, 12 917:12 studying [1] 917:9 style [1] 848:4 sub-channels [2] 964:19,20 sub-sample [1] 793:13 sub-sampled [1] 779:13 sub-sampling [1] 793:17 sub-selected [1] 793:9 subjective [4] 752:25 757:8,9,24 submit [1] 770:22 submitted [6] 770:21 885:16,20, 25 886:3,16 subscriber [30] 791:10,12,15,25 792:6,7,11 793:19,22 794:10,13, 15 795:5,12 796:1,2,5,11,12,17,21 804:14 806:23 809:14 934:4 936: 15 951:8 962:24 963:1,4 subscribers [16] 764:21 796:4 935:15 941:17 951:11,13 953:20 954:22,24 955:9 963:13,13,19 968:22 970:2 subtitle [1] 863:13 suffer [1] 911:10 sufficiently [1] 869:15 suggest [6] 764:23 771:2 823:15, 21 867:17 908:15 suggesting [3] 908:20,24,25 suggestion [1] 919:2 suggests [2] 772:18 786:9 Suite [3] 738:5,11,19 sum [29] 763:23 772:11 773:12 776:22,23 777:3,6,19 808:23 813: 25 815:17 826:14 849:18 850:11, 16 853:18 858:2 859:7,14 861:21 884:9,20 885:8 886:13,15 925:22 926:1,7,10 summaries [3] 892:20 900:19,24 summarization [1] 839:14 summarizes [1] 782:10 summary [6] 888:2 892:23 896:6 898:5 899:7,18,22 900:4 superior [1] 754:6 supervise [3] 943:23 947:9 949:9 supervised [3] 930:10 947:12,13 supervisor [1] 866:3 supervisory [1] 944:2 Suppliers [9] 737:2 740:17 741:21 742:16 770:21 811:3 821:3 905:7 942:13 Suppliers' [2] 743:12 850:22 support [2] 885:12 932:13	supposed [6] 756:7 777:2 851:10 857:1 861:12 surprised [1] 965:7 surround [1] 932:3 surrounding [1] 966:4 Survey [204] 749:6 750:19 752:18 759:2 762:8,12,16 763:11,22 764: 25 765:1 766:3,9 767:7 768:18 769:9,14 770:23 771:4,9 773:6,12, 25 777:10 778:1,7,8,12,16 779:24, 25 780:13,15,18 781:4,6,10,13,14, 18,22,22,25 782:7,11,12 783:15, 17 784:14 785:8 786:19 787:6 788:3,11,19,25 789:9,11,11,16 790:2,20 791:1 792:12,17,19,20, 23 793:21,23 794:18 795:14,16 796:14,22,23,24 797:9 802:20,21 803:21 804:1,18 807:14,20 808:2, 23 809:5,8,10,17,20 810:3,4,16,17 811:10,24 812:2,16,21 814:11 815:5 816:8 818:5 819:2,14 820: 13,22 821:16 822:6 824:3 825:11 826:12,22,22,23 828:6,8,10,16 829:21,25 831:6,22 833:5,15,20, 24 834:11 835:9,14 837:10,22,24 838:4,13,13 839:8 841:12,18,21, 23 842:3,9,15,16 843:14 844:6,11 845:3,12,20 846:8,16,19 849:11, 18 850:12 859:19 860:13,16 861: 21 863:20 864:2,7 865:10 866:9, 11,13 868:6,7,23 869:8,9,16 871:4 879:18,19,25 880:5 883:10 886: 22 888:25 890:16 893:15 896:17 897:21 899:8 905:11 906:19 907: 11 909:6 912:2,25 914:21,24,25 916:11 925:14,22,24 926:2,3 survey's [1] 787:9 surveyed [1] 762:7 surveying [1] 796:18 surveys [28] 749:21,23 762:3 771: 21 779:25 787:13 790:8,9 811:6, 10,15,22 814:18 820:11 827:12,19 828:15,22 830:24 833:21 835:16, 24 836:25 862:13 864:14 872:6 Sustained [1] 910:22 SUZANNE [1] 735:9 swath [1] 935:21 switch [4] 746:1,4 778:4 790:13 switched [1] 973:19 switching [1] 762:12 sworn [2] 749:1 926:25 syndicated [17] 753:14 756:22 889:9,13,21 944:18,21 945:9,15 946:5,9 950:12 955:4,14,17 956:4, 8 system [99] 752:11 755:3 760:25 763:7 764:7,19,20 765:21,23 768: 25 775:21 776:7 792:24 796:4,11, 13 797:3 820:5 838:13,17,24 839: 9,18 840:2 841:14 844:5 845:15 847:1 851:18 852:23 853:9 854: 12,22 870:3,7,14,16,23 871:24	872:11,22 873:7,14,23 875:19 876:21 879:1 887:22 893:7,8 909: 25 910:1,5 935:18,24 936:19,21 940:9,10 941:12,22 945:7 949:5 950:3,15,16 954:13 957:4,24 958: 3,7,8,14 959:2,11,25 960:3,6,9,18 961:24 962:13 963:6,14 964:9,10, 14,24 965:1,10,18 968:4,8 969:21 970:18 972:1,2,4,10 system's [1] 955:8 systematically [1] 869:10 systemic [3] 822:18 823:1,9 systems [96] 749:23 751:4,9,23 752:17 753:16 754:4,9,17,19 756: 6,19 760:11,13 762:9,21,24 763:3, 12,13,14,15,16 764:12,15 765:5, 13,16 766:2,5 767:5,23,25 768:21 769:10,15 770:11,17 771:12,22 773:18 778:1,9 785:19 791:2 792: 13 795:15,24 796:23 804:16 806: 24 809:7,12 812:25 819:5 828:3 846:1 892:11 893:16,25 895:8 909:7,16 910:7,18 923:4,8 928:11 930:8 938:15 942:17 943:1 948: 21 949:2,13,17 950:10,17 951:5,9, 12,17,19,23 952:4,5,8 953:4,16,18 954:10 961:21 962:23 963:1 971: 16,24 <div style="text-align: center;">T</div> table [11] 757:15 799:6 802:7,18 803:7 806:19 831:2 832:11,12,25 909:8 tables [4] 794:3,6,7,9 tactics [1] 743:17 tailored [1] 872:2 talked [16] 751:1 752:3,13 753:11 777:17 778:3 817:5,8 874:3 887: 14 892:5 905:21 964:11 968:5 969:20 talks [4] 751:8 758:24 864:6 897: 16 task [18] 768:11,14 772:21 777:22 855:8 859:20,22 871:7,12,13 874: 2 881:5 883:23 884:19 887:12 888:19 895:6 925:5 tasked [2] 886:25 887:3 tasks [3] 854:7,16 860:4 tax [1] 888:25 taxpayer [1] 937:13 taxpayers [2] 935:25 938:24 team [5] 878:18 879:12 900:3,10 933:6 teams [7] 900:8,9 931:24 932:4 940:20,21,24 Tech [2] 939:16,17 technical [2] 840:14 963:6 telethon [1] 932:12 Television [52] 736:18 737:13 749: 24 750:20 751:11,16 753:3,13 754:21 756:23 760:12,13 761:14 762:20 763:1,2,6,14,15 764:2,8,10 768:6 771:23 777:12 778:2 779:	14 796:9,10,20 905:13 928:11,21, 23,25 929:10,12,21 930:1,3,16,19 931:4,11 937:3 947:2 960:13 964: 2,14,18 965:17 970:9 Television's [1] 795:12 Television-only [3] 773:18 775: 13 778:8 tells [1] 832:19 temperature [1] 911:9 template [2] 812:10 897:10 templates [3] 812:20,23 813:2 ten [7] 849:24,24 850:4 910:16 911: 6 920:21 968:25 tends [1] 824:17 Tennessee [2] 972:5,9 tension [1] 766:8 Tenth [1] 737:19 term [10] 772:25 782:16 791:9 817: 2,3 819:13 824:16 838:20 899:3 961:5 terminology [1] 899:2 terms [4] 824:14 881:9 932:23 946: 22 terrific [1] 755:17 test [10] 818:5 836:19,21,22,23 877:15 912:12 913:24 914:10,11 test/retest [2] 817:12,16 testified [19] 749:1,7 778:23 780: 21 820:16,18 849:23 864:13,24 906:25 910:20 927:1 944:6 945:1 946:13 948:19 954:16,18 962:8 testify [2] 748:4 974:5 testimonies [3] 780:14 829:10 886:8 Testimony [89] 740:20,25 741:7, 13 742:2 743:13 744:18 745:14 746:16,17,23 747:5,7,13,15,17,23 750:24 751:7 752:4 756:21 758: 15,24 774:4,8,12 775:20 776:2 779:5,20 780:3,8 781:5 784:1,17, 20,25 786:11 787:4 792:1 797:19 798:8 812:6,11 819:11 820:9,14 821:2,5,13,19,22 827:12 829:9,14, 21,24 830:6,11,11,22 834:13 837: 1,4 842:19 849:2,21 864:16 866:5 885:1,2,5,16,23 886:2 894:19 895: 15,18,20 904:24 905:1 915:10 921:20 925:21 927:17 940:7 942: 15 947:1 951:22 testing [1] 818:20 tests [3] 813:20 814:16 816:20 Texas [1] 972:24 textbook [1] 781:24 texts [1] 777:6 themselves [2] 809:18 944:12 theoretical [1] 789:3 theoretically [6] 760:16,18 765:6, 8 767:14 773:4 theory [2] 789:14,18 there's [18] 773:22 836:3 850:3 851:13 859:7 874:24 889:9 890: 21 894:14 903:7,8 904:19 907:14
--	---	---	---

<p>911:11 913:6,6 925:5,16 thereby [1] 786:14 therefore [3] 780:9 786:23 814:12 they've [6] 855:1,2 876:15 890:23 891:15 903:16 thinking [30] 757:13,22 769:2 772: 16 781:21 787:18 788:22 789:8 795:3 803:12 813:22 814:24,25 817:17 829:4,7 834:7 859:8 874: 10,14 877:19 878:5,7,9 879:5,8 883:12 888:6,11 895:4 Third [24] 740:17,24,25 741:3,7,22 742:10,11,13 743:22 744:7,9 745: 14,18,19,25 746:8,15,18,23 747:2, 10,12,19 thirdly [2] 941:6 953:10 though [11] 750:14 769:5 788:12 806:18 810:1 835:14 858:15 871: 13 906:8 916:13 962:5 threaten [1] 869:9 three [19] 741:12 743:14 757:16,23 881:2,19 885:11 898:8,20 938:14, 15 942:17 948:21 951:22 952:4, 15 973:9,10,20 throughout [3] 882:2 892:4 901: 13 throw [1] 897:3 Thursday [1] 974:18 fighter [1] 803:22 tilt [1] 956:14 timeline [4] 833:14 834:9 836:3,10 tip [1] 936:8 title [2] 889:17 902:14 titles [1] 901:10 TN [1] 972:5 TNK [1] 972:2 today [11] 740:4 755:8 756:9 779: 11 791:21 806:8 904:19 926:1 942:15 973:6,22 together [4] 782:13 792:9 808:22 913:3 tomorrow [7] 927:8 973:10,12,13, 14,20 974:8 took [7] 742:12 769:20,24 770:15 780:24 892:24 922:13 tool [1] 885:9 top [8] 740:16,19 767:15 851:17 897:19 969:8,8,11 topics [1] 847:12 total [11] 800:1,22 804:23 805:2 807:11 810:12 899:17,17 927:15 968:21,21 totality [1] 856:1 touched [1] 911:25 towards [2] 823:10 892:13 track [1] 800:4 tradeoff [1] 884:11 tradeoffs [3] 884:4,6,14 traditionally [1] 906:6 traffic [1] 941:10 trained [6] 863:8 864:24 865:4 866:2 867:1,2</p>	<p>transcript [1] 976:4 translation [2] 803:16 806:9 transmit [1] 838:25 transmitted [2] 840:12 904:20 transmitting [1] 894:15 Trautman [17] 752:8,11 761:1 762: 7 763:19 764:6 769:20,23 771:15 778:5 786:4 803:25 811:23 830: 23 861:11 891:25 907:20 Trautman's [23] 750:24,25 751:6, 12 753:2 758:11,14 823 766:16 774:4,8 812:6,11 829 830:6,11, 14 831:24 832:2 866:5 895:15,19 907:8 travel [1] 966:21 traveling [1] 927:9 treat [1] 917:5 treatment [3] 893:15,23 895:12 trial [4] 743:17 797:14 847:19 926: 20 Tribunal [1] 830:2 Tribunal's [1] 830:16 fried [2] 763:11 918:19 trigger [1] 793:10 trip [1] 827:7 trite [1] 841:17 troubling [1] 883:3 true [17] 760:2 762:3,15,17 763:9, 12,19 769:13 773:10 815:3,4 833: 13 839:3 926:1 950:15 964:23 976:3 try [11] 740:5 756:11 774:6 824:24 825:25 882:20 917:3 919:1 921: 16 954:7 974:6 trying [29] 754:24 756:2 762:3 763: 20,25 764:5,6,9,13,24 765:4 766: 19 775:16 782:5 785:2 800:16 801:4,5 802:23 809:23 810:7 838: 23 841:3 842:11 879:24 899:1 904:10,12 918:22 turn [5] 740:5 869:2 921:19 933:13 940:8 turned [1] 922:15 turning [1] 970:10 TV [2] 740:11 970:15 two [25] 744:23 745:15 751:19 757: 22 765:10 766:19 776:24 784:5 796:4 812:22,22 813:2 817:3,25 823:5,14 848:21 879:7 881:21 884:1 896:25 903:6 905:5 909:20 934:21 type [8] 776:9 877:19,21 912:18 913:12,14 914:8 916:1 types [4] 759:22 879:7 912:20,22 typical [4] 959:23 961:10,14 962: 15 typically [10] 755:3 759:7,25 776: 25 777:1 786:2 823:19 864:14 917:21 959:9</p>	<p>uncertainty [1] 917:21 unclear [3] 869:8,15,21 under [6] 748:22 818:14,16 863:18 865:11 920:6 underestimate [1] 824:1 underlying [1] 790:22 underrepresented [1] 792:14 understand [42] 743:21 746:1 748:2,14 764:3 779:4 800:18 802: 23 814:14 817:10 831:15 836:8 838:20 840:25 841:9 842:3,13 843:6 845:16 846:23 856:9 860: 10 868:19 869:14 874:23 876:10 878:11 881:10 882:4,12 883:20, 22 884:2 889:2 894:19 903:20 909:12,15 912:13 913:9 955:25 969:17 understanding [7] 841:4 875:24 894:16 906:2,3 910:14 913:22 understood [4] 746:15 772:20 779:3 961:17 undertake [1] 814:13 unduplicated [1] 970:24 unfortunately [1] 817:2 uninformative [3] 772:24 773:2,4 unique [7] 754:20 756:16 932:18 952:19 969:20,23 970:20 uniquely [2] 953:10 970:25 unit [1] 790:16 UNITED [1] 735:1 universe [15] 767:22 786:6,7 791: 2 792:13 793:24 794:16 795:14 796:23 810:8 845:14 916:13,15 917:1,4 University [1] 939:20 unknown [1] 789:23 unless [3] 771:19 797:10 900:13 unlikely [5] 771:21 792:17 892:22 919:9 968:13 unreliability [2] 916:1 919:7 unreliable [6] 797:21 798:3 810: 19 915:13,16,22 until [4] 831:6 833:10 834:16 974: 14 up [43] 740:7 742:9 743:16 749:20 773:14,20 775:14,18,23 776:13 777:24 783:2,23 784:22 789:25 791:23 798:10 802:2 809:22 810: 23 818:2 825:25 830:9 846:13 861:20 862:22 864:16 878:14,25 879:17 883:6 897:19 910:3 911:9 913:24 916:2 918:16 923:16 935: 21 951:17 960:22,22 973:13 up-to-date [1] 741:18 useful [4] 781:21 782:4 803:16 882:1 uses [3] 817:1,3 969:5 using [6] 742:17 773:15 873:10 879:20 905:12 933:22 utility [7] 797:23 802:11 803:3 809: 2 810:14,17 924:7</p>	<p>vague [2] 879:22 961:5 valid [3] 819:2,14 830:21 validity [23] 813:20,23 814:4,7,15, 16,24,25 815:1,2,8,11,13,14,19,23 816:2,8,15 819:16,18,20 869:9 valuable [2] 754:7 756:8 valuation [25] 751:10,15 753:3,22 754:20 756:23 761:20 763:2,6 768:4 772:9 795:21 798:16 837: 17 857:25 858:13 883:24 884:5 887:4 888:18,18 897:15 906:23 919:9 920:2 valuations [6] 764:1 767:8 773:13 777:13 797:4 820:5 903:3 919:23 value [37] 758:13 760:14 762:4 764:8 766:2 772:3 775:22 776:6 797:24 809:6 815:3,4 819:3,23 830:20 837:25 838:18 841:2 842: 17,21 844:20 887:8,22 893:9 922: 13 923:21 935:7 945:2,5,11,15,24 946:17,20 954:21,21,23 valued [5] 763:13 764:10 766:10 804:22 808:12 valuing [1] 808:9 variability [3] 760:7 763:5 919:2 variables [1] 768:20 variance [3] 760:4 916:3,3 variation [3] 762:19 763:17,21 varied [2] 791:8,8 varies [1] 813:5 various [7] 747:17 837:20,21 838: 10 844:18 931:15 943:6 verbiage [1] 889:6 verify [1] 831:25 version [8] 740:21,22 742:2,14 743:11 744:18 813:25 927:16 versions [8] 741:13 743:14 773: 23 774:1 812:15,15,21 813:3 versus [7] 777:23 795:14 796:23 805:23 834:25 881:12 936:2 via [1] 837:22 vice [3] 928:22,24 930:12 VICTOR [2] 738:9 911:23 view [16] 802:9 846:15 893:13,13, 14 902:12,13 904:22 935:5,11,12, 16 938:20 953:23,24 968:22 viewed [2] 969:9,12 viewer [1] 958:7 viewing [14] 945:19 948:9,13,14 968:4,9,10,15,20,21 969:9,11,16 971:21 viewpoint [3] 753:1 770:4 802:15 Virginia [12] 937:22 938:22,23 939: 11,16,17,21 971:15 972:9,14,22, 23 visual [1] 750:4 VOIR [1] 975:2 VOLUME [1] 735:20 volunteers [1] 864:25 voter [1] 937:12 voters [2] 935:25 941:3 voters/Virginia [1] 938:23</p>
--	--	---	--

W	
WAGT [2] 943:19,20	10 759:15 761:16 764:1 767:12
wait [3] 750:10 896:11,11	769:3 785:21 792:18 794:17 797:
waiting [2] 831:9,11	2 815:15 816:11 824:2 825:6 826:
walk [1] 807:16	20 827:13,24 831:16 833:4 834:
walking [1] 789:22	10 842:8 843:7 847:11 856:10
wall-to-wall [1] 932:8	861:7 873:2 878:9,21 913:12 925:
wanted [16] 745:6 749:22 753:8	25 932:12 935:6 945:12 946:8
761:6,7 788:3,4 799:8 834:24 847:	949:23,24 952:12 970:2 973:24
6,7,11 904:21 915:21 924:19 927:	White [4] 899:24 900:5 901:24 904:
13	14
wants [2] 865:2 957:4	who's [1] 832:8
WARLEY [1] 739:4	whoever [1] 962:6
warm-up [9] 853:10,13 871:17,19	whole [8] 742:19,21 871:18 878:
882:19 883:2,16,17 884:13	15 879:17 912:24 913:6,19
warned [1] 883:6	wide [9] 802:10,21 803:2 809:18
warning [1] 869:20	810:9,10 915:23 916:14 954:8
Washington [24] 735:16 736:10,	wider [3] 804:1,4 924:14
16,24 737:10,20 738:6,20 739:8	widest [3] 798:20 799:4,13
941:2,15,18,20 953:7 956:7 964:	will [42] 741:6 742:2 743:3,4 745:5,
20 965:23,25 966:5,9,11 967:6	25 746:4 748:3 774:19 778:4 783:
970:8,20	11 784:1 830:19 832:1 847:16,17
Washington-focused [1] 966:7	848:13 857:14 866:20 889:1 897:
watch [9] 946:2 951:14,18 953:20,	3 899:9 921:16,18 926:14 927:9
24,24 954:2 955:9,11	933:25 942:10 954:1 955:2,13
watched [1] 968:24	957:16 973:9,13,15,16,17,20 974:
way [25] 750:12 751:21 755:20 781:	5,6,9,14
17 782:3 785:21 794:16,20 801:	willing [1] 947:22
22 818:15,22 832:2 835:3 836:20	winner [1] 904:4
862:7 866:22 876:13 878:25 886:	Winthrop [1] 739:6
20 891:22 894:21 925:5 930:10	wipe [1] 786:25
932:2 935:21	wired [1] 740:3
ways [6] 758:4,5 815:1,11 819:18	wish [1] 897:7
862:10	WITHDRAWN [1] 975:19
WDBJ [11] 937:22,22 938:4,16,19,	within [28] 754:14 760:5,8,8 763:
21 939:1 971:6,16,20 972:10	18 764:15 779:13 791:7 793:17
WDBJ's [1] 939:4	813:3 817:14 838:2 857:18 872:
weather [8] 928:20 931:21 932:7,8	25 876:11,12 877:13,23 878:10,24
936:5 941:10	903:6 909:1 919:14,22 947:9 957:
week [3] 927:10 933:25 954:3	25 958:3 963:14
weigh [1] 743:3	without [8] 796:18 806:14 872:18
weight [2] 743:4 756:16	877:2 882:12 893:13,15 904:16
well-established [1] 885:9	witness [96] 746:10 748:3,21,25
well-known [1] 936:5	750:13 753:25 754:18 755:19 756:
well-trained [1] 862:4	9,20 758:10,17,19,21,22 770:4
West [3] 971:15 972:21,23	775:3,5 782:20,23,25 783:5,11
WETA [8] 964:19,24 965:3,14 970:	799:3,7,8 806:14 816:10,25 827:8
1,10,20,25	832:10,14,22 835:6 839:22 840:1
WGN [11] 768:6,6,7,8 893:19 894:	848:6,12,21,24 861:10 866:12,18
15,24 899:24 904:20 905:19,20	867:11 868:4,11,24 876:13,24
WGN-only [10] 812:24 892:6,21	877:4,12 882:7,17 883:15 884:8,
893:7,8,16,25 895:3 905:18,22	15 895:23,25 896:16 897:2 903:
WGNA [9] 892:18 893:10 895:9	12,24 910:20 911:1,12 914:22
896:6 898:2,4,14 904:12 905:13	915:1,4 918:3,6,14,18 920:6,25
WGNA-only [4] 892:11,17,20 897:	921:5,12 925:15 926:18,22 927:
10	12 928:5 933:24 938:3,6,8,12 948:
whatever [4] 743:4 786:3 886:16	10 956:12 963:22 967:12 973:1,4,
917:17	23 974:10,11 975:2
Whereas [2] 766:3 823:24	witness' [1] 927:7
Whereupon [3] 748:23 926:23	witnesses [3] 748:9 886:19 973:6
974:16	WJZ [8] 940:15,19 941:22 954:15,
whether [41] 743:24 756:14 757:	19 955:3 962:1 964:24
	wonder [2] 772:14 860:25

word [9] 828:19 876:9 877:2,3,8
882:9 896:14 901:18 945:4
wording [7] 773:24 813:5 834:22
839:23 847:8 908:23 914:13
words [6] 766:1 781:15 782:8 793:
5 820:20 887:25
work [7] 835:18 913:19 927:8 943:
11 947:2 948:15 973:12
world [8] 807:3 809:23 881:25 902:
8,9 918:7,19 928:25
worms [1] 913:20
worried [1] 917:14
worry [4] 785:14 787:22 795:9 882:
18
worth [5] 799:25 800:21 801:8,24
948:5
wrenched [1] 783:1
write [2] 750:13 776:15
writing [3] 825:16 865:17 886:6
written [30] 740:19 743:12 746:17,
23 747:4,13,14,16,22 750:23 751:
7 756:20 758:14,23 779:5 780:7
781:5 790:21 797:18 798:7 802:
16 812:6 830:11 907:22 921:20
930:25 942:14 945:1 951:21 954:
18
wrote [2] 786:11 797:19
WSBT [11] 934:4,6,14,15,18 935:3
936:2,5 950:10,11 956:1
WSBT's [1] 934:20

Y

year [19] 745:1 798:25 812:23 813:
13,15,18 825:21 826:17,19 828:7,
12 829:22 831:20 834:7,18 901:
15 919:12 965:9 969:7
years [25] 785:11 787:11 791:8
813:17 819:6 825:24 831:3 834:5
885:17,21,24,24 886:4,5 901:13,
18 906:22 910:16 914:6,19 928:
16 939:6,6,7 965:9
years' [1] 900:19
yellow [2] 934:8 937:24
yesterday [17] 749:21 750:21 752:
4,13 753:12 761:7,16,21 772:23
778:15,23 783:2 849:8 905:1 909:
9,13 923:2
yields [1] 818:14
yourself [2] 761:12 936:15

Z

zero [2] 807:6 808:12